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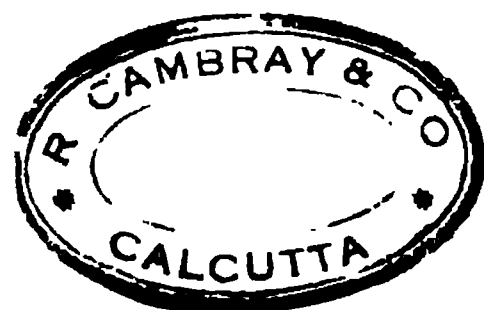
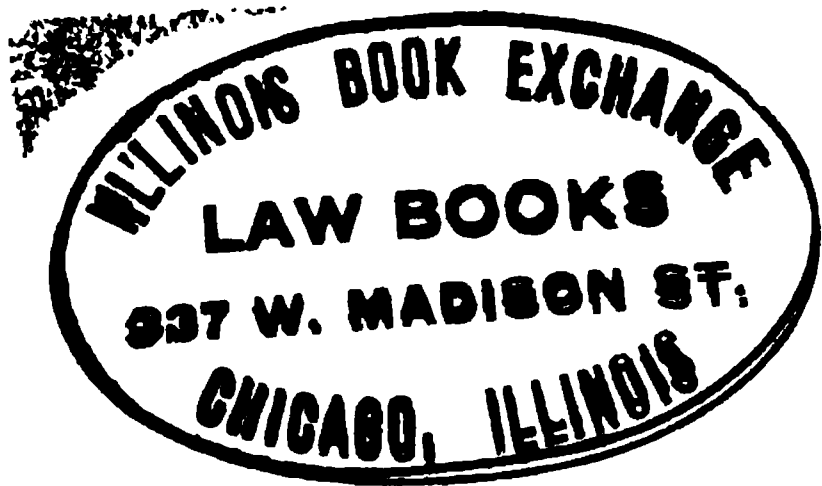
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**A TREATISE**  
**ON**  
**EXTRADITION**  
**AND**  
**INTERSTATE RENDITION.**

**WITH APPENDICES CONTAINING**  
**THE TREATIES AND STATUTES RELATING TO EXTRADITION;**  
**THE TREATIES RELATING TO THE DESERTION OF SEAMEN;**  
**AND THE STATUTES, RULES OF PRACTICE, AND FORMS, IN FORCE IN**  
**THE SEVERAL STATES AND TERRITORIES, RELATING**  
**TO INTERSTATE RENDITION.**

**BY**

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**WORK ON "EXTRA TERRITORIAL CRIME," OF A REPORT ON EXTRADI-**  
**TION TO THE INTERNATIONAL AMERICAN CONFERENCE, ETC.**

**IN TWO VOLUMES.**

**VOL. II.**

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**PART II.**  
**INTERSTATE RENDITION.**

**VOL. II. — 1**





## PART II.

### INTERSTATE RENDITION.

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#### CHAPTER I.

##### CONSTITUTIONAL PROVISION.

###### 1. *Origin of Provision.*

§ 516. **Rendition, not Extradition.** — The use of the term “extradition” to describe the rendition of fugitives from justice from one State of the Union to another is convenient and firmly established, but it is nevertheless inaccurate and misleading. On the theory that they were dealing with a matter of extradition in the international sense, public officers and law writers have been led to consult the principles of international law and to apply them to a subject which they do not govern. The transfer of an accused person from one part of a country to another having a common supreme government does not bring into operation the principles of international law.<sup>1</sup> Long before extradition became general enough to be treated as a system, it was the practice in various countries and between states more or less closely confederated to deliver up fugitive criminals from one part or state to another for trial. It was so as between the German states and among the Swiss cantons. The same rule prevailed in Sweden and Norway.<sup>2</sup> And it was held in England that a person could be arrested in that country and transferred to Scotland, or Ireland, or the colonies, for trial for an offence committed within their respective jurisdictions.<sup>3</sup> In such cases the ques-

<sup>1</sup> W. B. Lawrence, 14 Alb. L. J. 88.

<sup>2</sup> *Revue de droit int.* (1870), p. 179, note.

<sup>3</sup> Clarke on Extradition, p. 24; W. B. Lawrence, 14 Alb. L. J. 88.

tion was not international, but domestic. Nothing could more clearly show the inapplicability of the principles of public law to the rendition of fugitive criminals as between the United States, than the provision of the Constitution by which such rendition is required. Subsection 2, section 2, article 4, of the Constitution reads as follows: "A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime." Both the scope and character of this provision show that it is not in the nature of an engagement between foreign and independent nations. The general principles of public law exclude the surrender of political fugitives; the provision in question, framed by men who had just been engaged in a revolution, expressly requires surrender for treason. Moreover, there is no restriction as to the offences for which delivery may be demanded; international conventions either enumerate and define the extraditable crimes, or else by a general clause confine the operation of the treaty to offences of a certain gravity. The reasons for the sweeping provision of the Constitution are obvious. Among the purposes for which the Constitution was declared to be ordained were "to form a more perfect union, establish justice," and "insure domestic tranquillity." Each State was guaranteed a republican form of government; due process of law was secured; and the States were forbidden to pass any bill of attainder, or *ex post facto* law. Thus mutual confidence and mutual aid were worked into the fabric of the Union; and the duty of rendering up fugitives from justice was imposed without limitation in order that the law might everywhere and in all cases be vindicated. The right to grant asylum, generally denominated "the right of asylum," upon which so many of the fundamental rules of extradition depend, was excluded as between the component parts of the United States.

§ 517. **Confirmation of Ancient Practice; New England Plantations.** — The provision in the Constitution for the rendition of fugitives from justice involved no new principle. It merely

prescribed the method of doing what up to and even after the adoption of the Articles of Confederation of 1778 was usually accomplished through the courts, without the intervention of the executive.<sup>1</sup> The evidences of this fact are abundant and conclusive. On May 19, 1643, articles of confederation were entered into between the plantations under the government of Massachusetts, the plantations under the government of New Plymouth, the plantations under the government of Connecticut and the government of New Haven, with the plantations in combination therewith. There were twelve articles in all, and in the eighth there were, among other things, the following stipulations : —

“ It is also agreed, that if any servant run away from his master into any of these confederate jurisdictions, that in such case, upon certificate of one magistrate in the jurisdiction out of which the said servant fled, or upon other due proof, the said servant shall be delivered either to his master or any other that pursues and brings such certificate or proof. And that upon the escape of any prisoner or fugitive for any criminal cause, whether breaking prison or getting from the officer, or otherwise escaping, upon the certificate of two magistrates of the jurisdiction out of which the escape is made, that he was a prisoner or such an offender at the time of the escape, the magistrates, or some of them of the jurisdiction where for the present the said prisoner or fugitive abideth, shall forthwith grant such a warrant as the case will bear, for the apprehending of any such person and the delivery of him into the hand of the officer or other person who pursueth him ; and if there be help required for the safe returning of any such offender, then it shall be granted unto him that craves the same, he paying the charges thereof.” <sup>2</sup>

<sup>1</sup> Opinion of Mr. Justice Catron, *Holmes v. Jenison*, 14 Pet. 540, 597 ; *In re Fetter*, 3 Zab. 311 ; 3 Crim. L. Mag. 787 ; 5 Id. 258. Letter of Judge Bell to the governor of Pennsylvania, 2 Pa. L. J. 150. Leary's case, 10 Ben. 197, 206.

<sup>2</sup> Winthrop's Hist. of New England, vol. ii. p. 126. In the minutes of a meeting of the council of the United Colonies on Aug. 27, 1673, there is the following entry : “ The Commissioners of Connecticut made a relation of a murder lately committed by an Indian called Mowim, upon a Pequot Indian girl, in the bounds of Stonington within their jurisdiction ; which murderer was apprehended and imprisoned in order to his trial ; but breaking prison he fled to Ninicraft, who refuseth to deliver him up to justice amongst the English, pretending his

§ 518. **Connecticut Laws.** — In the Acts and Laws of Connecticut we find an act passed in October, 1720, which is as follows : —

**An Act to prevent such Persons abiding, and hiding in this Colony, as make their Escape from Justice ; or are Convicted of certain Crimes in other Colonies.**

*Whereas it has sometimes happened that some Persons Convicted in the neighboring Colonies of Crimes, which by the Laws of this Colony are punishable with corporal Punishment, make their Escape from the Administration of Justice in those Colonies ; or do Escape, and flee from the Prosecution of such Crimes there, and come into this Colony with design to hide from Justice ; or to take up their Abode here.*

*And whereas such evil Practices may often happen : And if such Persons are protected or indulged therein, it may prove of bad Consequence.*

**Which to Prevent :**

*Be it enacted by the Governour, Council and Representatives, in General Court assembled, and by the Authority of the same,*

own right to be the proper judge himself. Upon consideration hereof, and being requested to give our advice, the Commissioners think it most just and necessary that the authority of Connecticut do forthwith make further demand of the said murderer and bring him to his trial; and in case of neglect or refusal, to prosecute their demand to effect; and that Ninicroft [sic] be called to account and compelled to make reparation for the injury and affront hereby done to the English and their Government." Colonial Records of Connecticut, 1678-1689, pp. 488-489.

On Dec. 11, 1696, William Penn appeared before the Lords of Trade as a Proprietor of East Jersey, to make representations regarding the state of the colonies. He promised to present a scheme for their better regulation. On the 8th of February, 1697, he submitted a plan, entitled "A Briefe and Plaine Scheam how the English Colonies in the North parts of America, viz. : Boston, Connecticut, Road Island, New York, New Jersey, Pensilvania, Maryland, Virginia and Carolina may be made more usefull to the crowne, and one another's peace and safety with an universall concurrence."

He proposed that there should be a common assembly, composed of deputies from each colony, whose business it should be "to hear and adjust all matters of complaint or differences between Province and Province, As 1st, where persons quit their own Province and goe to another, that they may avoid their just debts tho they be able to pay them ; 2d, where offenders fly Justice, or Justice cannot well be had upon such offenders in the Provinces that entertain them ; 3dly, to prevent or cure injuries in point of commerce ; 4th, to consider ways and means to support the union and safety of these Provinces against the publick enemies." 100th Anniversary of the Constitution of the United States, vol. ii. pp. 450, 451.

That whatsoever Persons Convicted, as aforesaid; or that shall hereafter be Convicted, as aforesaid; or that are, or shall be pursued for such Crimes, if they make their Escape, as aforesaid, and come into this Colony, and continue here for the space of Two Months, without first having obtained Leave therefor of the General Assembly, and shall not depart out of this Colony within One Month after they shall be Warned so to do, by any Assistant or Justice of the Peace; or by the Select-men of that Town where they shall reside at that Time, and be thereof Convict before the County Court of that County wherein the Town or Place of Warning shall lye, shall suffer a fine of *Five Pounds* to the Treasurer of the Colony: To be Recovered as other Fines. In which Cases no Appeal shall be granted.

And if the person so Convicted, or suffering such Fine, shall not within One Month next after such Suffering, and Discharge thereon, depart out of this Colony, he shall be liable to the like Fine: To be Recovered as aforesaid; and so *Toties Quoties*. And that all Prosecutions upon this Act shall be within Three Years next after such Persons escaping, as aforesaid, come into this Colony, and not after.

*And be it further Enacted by the Authority aforesaid,* That if any such Person or Persons flying, or making Escape, as aforesaid, be pursued by Order of proper Authority, from any other Government, in order to bring him or them to Justice, he or they may be Apprehended by Order of the Authority of this Government.

And if on Examination and Enquiry into the Matter, it shall appear such Person or Persons have been Convicted, as aforesaid, and are escaping, or are flying from Prosecution, as aforesaid, he or they may be remanded back, and delivered to the Authority, or Officers from whom such Escape is made, in order that due and condign Punishment may be inflicted on such Transgressors.

This act is found in a somewhat modified form in the Acts and Laws of Connecticut, Revision of 1784, under the title of "An Act for remanding Persons who have committed crimes in other States, and to escape from Justice flee into this State;" and yet again, with further unimportant modifications, in the Revision of 1795, p. 218. There is also evidence in the colonial records of Pennsylvania of the existence of a custom of delivering up fugitive criminals as between Pennsylvania,

New Jersey, Maryland, and Delaware, upon the production of a writ signed by the chief justice of the State from which the fugitive escaped and indorsed by the chief justice of the State where he was found, both before and after the adoption of the Articles of Confederation.<sup>1</sup> That a similar custom was general among the British colonies in North America is further evidenced by the early legislation of the Canadian provinces.<sup>2</sup> And the practice was in accordance with the early decisions of the English courts.<sup>3</sup>

§ 519. **Articles of Confederation.** — In the fourth article of the Articles of Confederation we find the following provision: "If any person guilty of, or charged with treason, felony, or other high misdemeanor, in any State, shall flee from justice, and be found in any of the United States, he shall, upon demand of the governor or executive power of the State from which he fled, be delivered up and removed to the State having jurisdiction of his offence."<sup>4</sup> This provision appears to have introduced a new method of recovering fugitives from justice, and for this reason and because it was not as comprehensive as the previous practice, it does not seem to have been regarded as exclusive. Thus we find that in 1789, Chief Justice Brearly of New Jersey wrote to Governor Mifflin of Pennsylvania that the powers given by the Articles of Confederation to the State executive were "not necessary to be exercised in ordinary cases."<sup>5</sup> The imperfections in the provision in the Articles of Confederation as tested by the previous and subse-

<sup>1</sup> The first person to set forth the history of the rendition of fugitive criminals before the adoption of the Articles of Confederation, and between that time and the formation of the Constitution, was Mr. I. T. Hoague, who contributed to the *American Law Review* (vol. xiii. p. 210) a remarkably thorough, intelligent and able discussion of that subject. See also *Minutes of Council of Penn.*, i. 101; *Id.* 147; *Hurd on Habeas Corpus*, 598, 2d ed. *Id.* 292; *Penn. Archives*, x. 291; *Id.* 290, 320, 324, 530, 531; *Minutes of Council of Penn.*, xiii. 270; *Id.* xv. 499; *Id.* iii. 108; *Id.* v. 94; *Id.* ix. 96; *Id.* vi. 596, 604; *Id.* xvi. 14; *Penn. Archives*, x. 354.

<sup>2</sup> *Supra.*

<sup>3</sup> *Rex v. Lundy*, 2 Vent. 314; *Rex v. Kimberly*, 2 Stra. 848.

<sup>4</sup> By an act of 1779, the legislature of Virginia gave to this provision a statutory form in that State. *Henning's Statutes at Large*, vol. x. p. 130.

<sup>5</sup> 13 *Am. Law Rev.*, pp. 190, 191.



quent practice led to the insertion of the broad and unconditional clause in the Constitution. This clause, as reported by the committee on detail of the constitutional convention, contained the words "high misdemeanor," as in the Articles of Confederation. But, because these words were capable of a construction too technical and limited, the convention substituted for them the words "other crime," which are of general import.<sup>1</sup>

§ 520. **Formulation of Constitutional Provision.** — By the published records we find that on Tuesday, May 29, 1787, Mr. Charles Pinckney laid before the convention that formulated the Constitution of the United States a scheme which he had prepared of a Federal government.<sup>2</sup> Of this scheme the twelfth article read as follows :<sup>3</sup> —

"The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States. Any person, charged with crimes in any State, fleeing from justice to another, shall, on the demand of the Executive of the State from which he fled, be delivered up, and removed to the State having jurisdiction of the offence."

On August 6, 1787, Mr. Rutledge delivered a report of the Committee on Detail, containing a draft of a constitution.<sup>4</sup> In this draft the twelfth article of the Pinckney project was separated into two, numbered 14 and 15. Article 14 contained the same clause as the Pinckney draft on the privileges and immunities of citizens. Article 15 read as follows : —

"Any person charged with treason, felony or high misdemeanor in any State, who shall flee from justice, and shall be found in any other State, shall, on demand of the executive power of the State from which he fled, be delivered up and removed to the State having jurisdiction of the offence."<sup>5</sup>

On Tuesday, August 28, Mr. Madison makes the following entry : —

<sup>1</sup> 13 Am. Law Rev., p. 180 *et seq.*; 5 Elliott, Deb. 381, 2 Mad. Papers, 1240; 5 Elliott, Deb. 487, 3 Mad. Papers, 1447; 5 Elliott, Deb. 128, 132, 2 Mad. Papers, 745; 5 Elliott, Deb. 584, 589.

<sup>2</sup> 2 Mad. Papers, 735.

<sup>4</sup> Id. 1226.

<sup>3</sup> Id. 745.

<sup>5</sup> Id. 1240.

“Article 15, being then taken up, the words ‘high misdemeanor’ were struck out, and the words ‘other crime’ inserted, in order to comprehend all proper cases; it being doubtful whether ‘high misdemeanor’ had not a technical meaning too limited.”<sup>1</sup>

The article, as thus amended, was agreed to, *nem. con.*<sup>2</sup> On September 12, Doctor Johnson, from the Committee on Style, reported a digest of the plan of the Constitution, in the second section of the fourth article of which there is the following clause:—

“A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, and removed to the State having jurisdiction of the crime.”<sup>3</sup>

The only change subsequently made was in the substitution of the words “to be removed” for the phrase “and removed,” in the last clause of the section.

## 2. *Scope of Provision.*

§ 521. **Use of words “other crime.”**—The intention of the framers of the Constitution in substituting the words “other crime” for “high misdemeanor,” is forcibly illustrated in the correspondence of Madison. In a letter to Jefferson, of March 16, 1784,<sup>4</sup> during the Articles of Confederation, Madison refers to a demand which had been made by the executive of South Carolina upon the executive of Virginia for the surrender of a citizen of the latter State who had violently assaulted a member of the legislature of South Carolina during the sitting of the court of general sessions. The matter was referred to Edmund Randolph, then attorney-general of Virginia, who appears to have advised against complying with the demand. Referring to the case, Madison said:—

“The questions which arise upon it are; 1. Whether it be a charge of high misdemeanor without the meaning of the fourth Article of Confederation. 2. Whether, in expounding the terms ‘high

<sup>1</sup> 8 Mad. Papers, 1447.

<sup>3</sup> Id. 1558.

<sup>2</sup> Id. 1448.

<sup>4</sup> 1 Mad. Writings, 68, 76.

misdemeanor,' the law of South Carolina, or the British law as in force in the United States before the Revolution, ought to be the standard. 8. If it be not a *casus foederis*, what the law of nations exacts of Virginia? 4. If the law of nations contains no adequate provision for such occurrences, whether the intimacy of the Union among the States, the relative position of some, and the common interest of all of them in guarding against impunity for offences which can be punished only by the jurisdiction within which they are committed, do not call for some supplemental regulations on this subject? Mr. Randolph thinks Virginia not bound to surrender the fugitive until she be convinced of the facts by more substantial information, and of its amounting to a high misdemeanor, by inspection of the law of South Carolina, which, and not the British law, ought to be the criterion. His reasons are too long to be rehearsed."

In a letter of March 10, 1784, to Edmund Randolph himself, Madison, referring to the provision in the Articles of Confederation, observed, "that if the compilers of the text had severally declared their meanings, these would have been as diverse as the comments which will be made upon it;" and concluded by saying:—

"Unless citizens of one State transgressing within the pale of another be given up to be punished by the latter, they cannot be punished at all; and it seems to be a common interest of the States that a few hours, or at most a few days, should not be sufficient to gain a sanctuary for the authors of numerous offences below 'high misdemeanors.' In a word, experience will show, if I mistake not, that the relative situation of the United States calls for a 'Droit Public' much more minute than that comprised in the federal articles, and which presupposes much greater mutual confidence and amity among the societies which are to obey it, than the law which has grown out of the transactions and intercourse of jealous and hostile nations."

It is somewhat of a coincidence that the first thorough discussion which we find of the provision in the Constitution is by Edmund Randolph. The governor of Pennsylvania had demanded of the governor of Virginia the surrender of certain persons charged with forcibly abducting a free negro from

Pennsylvania in order to sell him as a slave. By the laws of that State the offence was subject to fine and imprisonment at hard labor, but was not denominated a felony; by the laws of Virginia, it constituted merely a breach of the peace. The Governor of Virginia having on various grounds declined to grant a surrender, the papers in the case were sent by Governor Mifflin of Pennsylvania to President Washington, who referred them to Randolph, then Attorney-General of the United States. Randolph, on July 20, 1791, made a report, in which he held that, the other requirements of the Constitution being fulfilled, the offenders should be given up. In respect to the offence, he said:—

“ Why are the words ‘ or other crimes ’ added, if felonies alone were contemplated? In the penal code of almost every other State, the catalogue of felonies is undergoing a daily diminution. But it is not by the class of its punishment that the malignity of an offence is always to be determined. *Crimes going deep into the public peace may bear a milder name and consequence; and yet it would be singular to afford shelter to those who were guilty of them, because they were not so called and punished.*”<sup>1</sup>

§ 522. Includes all acts made punishable by Laws of demanding State. — The scope of the meaning of the words “ other crime ” was considered by the Supreme Court of the United States in the case of *Kentucky v. Denison*,<sup>2</sup> in 1860. This case came up on a motion made in behalf of the State of Kentucky for a rule on the governor of Ohio to show cause why a mandamus should not be issued by the Supreme Court, commanding him to cause to be delivered up Willis Lago, a fugitive from the justice of Kentucky, who had taken refuge in Ohio. Lago was a free man of color, and was under indictment in Kentucky for enticing a female slave to leave her owner and escape. A copy of this indictment, duly authenticated under the act of Congress of 1793, was presented to the governor of Ohio by the duly authorized agent of Kentucky, and the arrest and surrender of the fugitive demanded. Governor Denison of Ohio referred the matter to the attorney-

<sup>1</sup> 20 Am. St. Papers (Fol. ed.), 39.

<sup>2</sup> 24 How. 66.

general of the State, who reported that Lago should not be surrendered, on the ground that the offence charged was not "treason," or "felony," or any other crime under the laws of Ohio, or by the common law. He said that the question was presented, "Whether, under the Federal Constitution, one State is under an obligation to surrender its citizens or residents to any other State, on the charge that they have committed an offence not known to the laws of the former, nor affecting the public safety, nor regarded as *malum in se* by the general judgment and conscience of civilized nations. . . . The right rule, in my opinion, is that which holds the power to be limited to such acts as constitute either treason or felony by the common law, as that stood when the Constitution was adopted, or which are regarded as crimes by the usages and laws of all civilized nations." The Supreme Court refused the writ of mandamus on the ground that the governor of a State could not in that manner be coerced in the performance of his duty under the constitutional provision; but the opinion in the case, delivered by Chief Justice Taney, and representing the unanimous judgment of the court, has been considered as substantially equivalent in weight to a judicial decision. Chief Justice Taney said that the words "treason, felony, or other crime," in their plain and obvious import, as well as in their legal and technical sense, embraced every act forbidden and made punishable by the State in which it was committed.

"They were," he said, "introduced for the purpose of guarding against any restriction of the word 'crime,' and to prevent this provision from being construed by the rules and usages of independent nations in compacts for delivering up fugitives from justice. According to these usages, even where they admitted the obligation to deliver the fugitive, persons who fled on account of political offences were almost always excepted, and the nation upon which the demand is made also uniformly claims and exercises a discretion in weighing the evidence of the crime and the character of the offence. . . . And as the States of this Union, although united as one nation for certain specified purposes, are yet, so far as concerns their internal government, separate sovereignties, independent of each other, it was obviously deemed necessary to show, by the

terms used, that this compact was not to be regarded or construed as an ordinary treaty for extradition between nations altogether independent of each other, but was intended to embrace political offences against the sovereignty of the State, as well as all other crimes. And as treason was also a 'felony' (4 Bl. Com. 94), it was necessary to insert those words, to show, in language that could not be mistaken, that political offenders were included in it . . . ; for it is manifest that the statesmen who framed the Constitution were fully sensible that, from the complex character of the government, it must fail, unless the States mutually supported each other and the General Government; and that nothing would be more likely to disturb its peace, and end in discord, than permitting an offender against the laws of a State, by passing over a mathematical line which divides it from another, to defy its process, and stand ready, under the protection of the State, to repeat the offence as soon as another opportunity offered."

Chief Justice Taney also referred to the Articles of Confederation between the New England colonies of 1643,<sup>1</sup> and to the Articles of Confederation,<sup>2</sup> as showing the policy and purpose of the clause, and said : —

"The argument on behalf of the governor of Ohio, which insists upon excluding from this clause new offences created by a statute of the State, and growing out of its local institutions, and which are not admitted to be offences in the State where the fugitive is found, nor so regarded by the general usage of civilized nations, would render the clause useless for any practical purpose. For where can the line of division be drawn with anything like certainty? Who is to mark it? The governor of the demanding State would probably draw one line, and the governor of the other State another. And, if they differed, who is to decide between them? . . . Looking, therefore, to the words of the Constitution, to the obvious policy and necessity of this provision to preserve harmony between States, and order and law within their respective borders, and to its early adoption by the colonies and then by the confederated States, whose mutual interest it was to give each other aid and support whenever it was needed, the conclusion is irresistible, that this compact engrafted in the Constitution included, and was intended to include, every offence made punishable by the

<sup>1</sup> *Supra*, § 517.

<sup>2</sup> *Supra*, § 519.



law of the State in which it was committed, and that it gives the right to the executive authority of the State to demand the fugitive from the executive authority of the State in which he is found; that the right given to 'demand' implies that it is an absolute right; and it follows that there must be a correlative obligation to deliver, without any reference to the character of the crime charged, or to the policy or laws of the State to which the fugitive has fled."

The opinion of Chief Justice Taney has recently been affirmed by the Supreme Court of the United States in *Ex parte Reggel*,<sup>1</sup> in which the court said that the words "treason, felony, or other crime," included "every offence against the laws of the demanding State, without exception as to the nature of the crime." The theory of the attorney-general of Ohio as stated in the case of *Kentucky v. Denison* has not been sanctioned by the courts of that State, which have held that it is only necessary that the acts should be made criminal by the laws of the demanding State.<sup>2</sup>

§ 523. *Views of Governor Seward; Virginia Case.* — The opinion of the attorney-general of Ohio was in accordance with the position taken by Mr. Seward when governor of New York. On August 29, 1839, Lieutenant-Governor Hopkins of Virginia sent to Governor Seward, by a duly authorized agent, a requisition, accompanied with an affidavit, for the surrender of three men who were alleged to have feloniously stolen and taken away a negro slave from Virginia. On the 16th of the following September Governor Seward replied, declining to grant the surrender, on the ground, among others, that the offence not being such as was generally recognized by civilized states, and not being a crime by the laws of New York, did not come within the constitutional provision.<sup>3</sup> In his annual

<sup>1</sup> 114 U. S. 642.

<sup>2</sup> *Wilcox v. Nolze*, 34 Ohio St. 520; *Ex parte Sheldon*, Id. 319. In the latter case the court held that under the provisions of 75 Ohio L. 654, § 5, when it appears that a fugitive stands charged in the demanding State with a certain crime, the printed statutes of such State, purporting to be published by its authority, may be received by the governor and by the courts to show that the offence charged is made criminal by the laws there.

<sup>3</sup> For correspondence, see House Journal and Documents of Virginia, 1839-40, Doc. 1, pp. 31-43.

message to the legislature of New York in 1840, Governor Seward defined his position as follows:—

“ A requisition was made upon me in July last, by the executive of Virginia, for the delivery of three persons as fugitives from justice, charged with having feloniously stolen a negro slave in that State. I declined to comply with the requisition, upon the grounds that the right to demand, and the reciprocal obligation to surrender, fugitives from justice, between sovereign and independent nations, as defined by the law of nations, included only those cases in which the acts constituting the offence charged were recognized as crimes by the universal laws of all civilized countries; that the object of the provision contained in the Constitution of the United States, authorizing the demand and surrender of fugitives charged with treason, felony, or other crime, was to recognize and establish this principle of the law of nations in the mutual relations of the States as independent, equal, and sovereign communities; that the acts charged upon the persons demanded were not recognized as criminal by the laws of this State, or by the universal laws of all civilized countries; and that consequently the case did not fall within the provision of the Constitution of the United States.”<sup>1</sup>

§ 524. *Views held in Virginia.*—The correspondence with Governor Seward was transmitted by the governor of Virginia to the General Assembly of that State, and was referred to a committee, who, on March 17, 1840, made a report in which they reviewed the subject with marked ability, and submitted a series of resolutions which were adopted.<sup>2</sup> These resolutions were to the effect:—

1. That the reasons assigned by the governor of New York for his course were wholly unsatisfactory, and his refusal to comply with the demand of the executive of Virginia a palpable and dangerous violation of the Constitution and laws of the United States. 2. That that course could not be acquiesced in, and, if persisted in and sanctioned by the State of New York, it would become the solemn duty of Virginia to take measures for the protection of the property of her citizens. 3. That the governor be requested to renew his cor-

<sup>1</sup> 2 Seward's Works, 221; ed. 1853, N. Y.

<sup>2</sup> House Journal and Documents of Virginia, 1839-40, Doc. 1, pp. 31-43.

respondence with the executive of New York, requesting him to review his action and to urge the consideration of the subject on the legislature of his State. 4. That the governor of Virginia be requested to open correspondence with the executive of each of the slaveholding States, requesting their cooperation in any necessary and proper measure of redress which Virginia might be forced to adopt. 5. That the governor of Virginia be requested to forward a copy of the resolutions to the executive of each State of the Union, with the request that they be laid before their respective legislatures.<sup>1</sup>

Pursuant to these resolutions, the correspondence with Governor Seward was renewed. But in a letter addressed to the governor of Virginia on November 9, 1840, Governor Seward affirmed the principles previously laid down by him, and said that he had lately refused an application from the governor of Pennsylvania for the surrender of a person for fornication, and one from the governor of New Hampshire for adultery. He contended that the rule he had laid down would not result in confusion, since "the principles of the moral law were written by the hand of God in the heart of man"; that "the light of Revelation brings them out in bolder relief," and that upon "examination of the common law, the civil law, and the statutes of all civilized and Christian countries, it will be found not only that murder, treason, arson, burglary, forgery, perjury, rape, incest, bigamy, and the like, are 'crimes,' but also that they are neither 'lesser faults,' nor 'ordinary transgressions,' while adultery, petty stealing, libels, trespasses upon lands, and the like, are not regarded as 'crimes of great atrocity, or deeply affecting the public safety.'"<sup>2</sup> On March 26, 1841, Governor Seward transmitted to the legislature of New York certain resolutions of the legislature of Mississippi, condemnatory of his course.<sup>3</sup> In so doing, he said that on February 24, 1841, he issued a requisition to the executive of Virginia for the surrender of one Curry, charged with forgery. The governor of Virginia, while admitting the regularity of

<sup>1</sup> Acts of Assembly of Virginia, 1839-40, pp. 155-169.

<sup>2</sup> 2 Seward's Works (ed. 1853), 469, 478, 483.

<sup>3</sup> Laws of Miss., 1841.

the demand, refused to surrender the fugitive, who had been arrested and was in custody, till Governor Seward should reverse his decision, and offered to keep the fugitive in custody for six months in order to afford him opportunity to consider the subject. It seems that the Virginia House of Delegates expressed their disapprobation of the course of the governor of that State, and that his decision was reversed and the fugitive given up; and that the Governor then resigned.<sup>1</sup>

§ 525. **Views of Governor Seward; Pennsylvania Case.** — On October 10, 1840, Governor Seward refused to surrender, on the demand of the governor of Pennsylvania, one Stevens, charged with being a fugitive from the justice of that State. It appears that the alleged fugitive was a passenger on a steamboat on Lake Erie from Detroit to Buffalo, and that when the boat touched at Erie, in Pennsylvania, a deputy-sheriff went on board to arrest him on a *capias ad respondendum* in a civil action. The deputy found Stevens in a place of concealment, and was attacked by him. A struggle ensued, but the deputy succeeded in bringing him from his hiding-place. Stevens then requested to be taken to the captain's office, and while there assaulted the deputy and prostrated him. Meanwhile the boat got under weigh, and the deputy was carried to Dunkirk, Chautauqua County, in the State of New York. The governor of Pennsylvania demanded Stevens' surrender on the charge of assaulting and resisting an officer in the execution of civil process. In reply, Governor Seward said that the affidavit did not show whether the alleged fugitive was a citizen of New York or of Pennsylvania, of Michigan, or of some other State; nor whether the action in which the *capias* was issued was upon a contract or a tort; nor where the cause of action accrued; whether the action was one in which the detention was justified by the laws of Pennsylvania, or whether it was a non-bailable action; nor whether the writ contained any clause authorizing the defendant to be held to bail, or whether there was an order of a competent tribunal for that purpose. By the laws of New York seizure and detention on a *capias ad*

<sup>1</sup> 2 Seward's Works (ed. 1853), 390.

*respondendum* in a civil action on a contract would be assault and battery and false imprisonment, and resistance of the defendant sufficient to overcome force by force would be justified. In Pennsylvania, it seemed, some writs of *capias ad respondendum* wereailable and some not, and the affidavit ought to show that the writ in the case under consideration was of the former description. The request could not, therefore, be complied with because the annexed papers were defective. Governor Seward concluded as follows:—

“I am bound, however, in candor to say to your excellency further, that if the papers should be amended, yet inasmuch as imprisonment for debt, whether of citizens of this State or of the strangers within our borders, is forbidden by our laws; and inasmuch as the offence of resisting an officer making an arrest by virtue of civil process is only made a contempt of court and simple misdemeanor, and is not punishable as a felony, the question would then arise whether the case falls within the description of offences in which the obligation to surrender fugitives from justice is prescribed by the Constitution of the United States.”

§ 526. **Political Offences.**— One of the few cases in which a demand has been made for the surrender of a person for political offences under the constitutional provision, came before Governor Seward.<sup>1</sup> In 1842, the governor of Rhode Island requested Governor Seward to intervene to have Thomas Wilson Dorr, a fugitive from the justice of that State, charged with treason, and believed to be in the State of New York, arrested for surrender. On June 16, 1842, Governor Seward replied as follows:—

“I have now the honor to inform your excellency that Amos Adams, Esq., sheriff of the county of Albany, has this day been charged with a warrant, in compliance with your requisition, and he will proceed immediately to execute the same. I have again to

<sup>1</sup> It is stated in Appleton's Cyclopædia that Frederick Douglass being suspected of being implicated in John Brown's raid in 1859, Governor Wise of Virginia made a requisition for his surrender on the governor of the State of Michigan, where Douglass was then staying, in consequence of which the latter left the United States and went to England.

suggest for your consideration the expediency of immediately designating the agent to receive the fugitive, because I believe that such a proceeding would be more harmonious with the spirit of the Constitution than the detention of a person accused of such a crime, and under such circumstances, in a jail of this State. Nevertheless, the form of proceeding adopted by your excellency being in strict conformity with the law of the United States, I have not hesitated to perform the duty devolving upon me.”<sup>1</sup>

§ 527. **Governor Seward's views not maintained in New York.** — It is believed that the views of Governor Seward as to the meaning of the words “other crime” in the constitutional provision did not prevail in the State of New York before his time, and they have not since been accepted as sound. In the matter of Clark,<sup>2</sup> Savage, C. J., said: “The language is, treason, felony, or other crime; the word ‘crime’ is synonymous with misdemeanor (4 Black. Comm. 5), and includes every offence below felony punished by indictment as an offence against the public.” In *The People, ex rel. Lawrence, v. Brady*,<sup>3</sup> Judge Andrews said: —

“The word *crime*, in the clause of the constitution which has been quoted, embraces every act forbidden and made punishable by the laws of a State, and the right of a State to demand the surrender of fugitives from justice extends to all cases of the violation of its criminal law. (Com. of Kentucky *v. Denison*.) Felonies and misdemeanors, offences by statute and at common law, are alike within the constitutional provision; and the obligation to surrender the fugitive for an act which is made criminal by the law of the demanding State, but which is not criminal in the State upon which the demand is made, is the same as if the alleged act was a crime by the law of both.”

In *The People, ex rel., v. Donohue*,<sup>4</sup> it was contended that “theft” was not a crime either at common law or under the statutes of Connecticut, the State from which the fugitive escaped. The criticism was chiefly on the word. The court overruled the objection, saying: “It is quite evident, both at

<sup>1</sup> 2 Seward's Works (ed. 1853), p. 612.

<sup>2</sup> 9 Wend. 212.

<sup>3</sup> 56 N. Y. 182.

<sup>4</sup> 84 Id. 438.

common law and under the statutes of Connecticut, theft is recognized as a crime, and is synonymous with larceny, and the recital in the executive warrant that Jourdan was charged with theft is quite as effectual as if it had described him as charged with larceny." In the case of Sullivan, Governor Hill, of New York, surrendered the fugitive to the authorities of Mississippi on the charge of prize-fighting, notwithstanding that he had previously been arrested in Tennessee and discharged by a judge at Nashville on *habeas corpus*, on the ground that prize-fighting, being only a misdemeanor, did not come within the constitutional provision.<sup>1</sup>

§ 528. **Views of State Courts.** — It has been held in Indiana that misdemeanors are embraced in the words "other crimes."<sup>2</sup> It was held in Massachusetts, in the case of a person charged with selling intoxicating liquors contrary to law in Vermont, that the constitutional provision "extends to a person appearing to be charged with any crime whatever in that State."<sup>3</sup> In the Matter of Voorhees,<sup>4</sup> before the supreme court of New Jersey, in 1867, the fugitive was charged with obtaining money by false pretences in New Hampshire. It was contended that the words "other crime" only embraced crimes which were such at common law at the time of the adoption of the Constitution. Beasley, C. J., held that the words were "nomen generalissimum," and embraced every species of indictable offence, present and future, in the demanding State. In the same year precisely the same views were expressed by the supreme court of North Carolina in the case of Hughes,<sup>5</sup> who was charged with cheating by false pretences against the laws of the State of New York. It was held by Governor Fairfield, of Maine, that "other crime" included misdemeanors, and offences against property as well as the

<sup>1</sup> N. Y. Sun, July 12, 1889.

<sup>2</sup> *Morton v. Skinner*, 48 Ind. 123; citing *Com. v. Denison*, 24 How. 66; *In re Clark*, 9 Wend. 212; *State v. Buzine*, 4 Harr. 572; Walker, Am. Law, 511, § 187; 4 Chitty's Bl. Com. 5; Bouv. L. Dic., title "Crime"; Hurd on Habeas Corpus, 595; 2 Kent's Com. 82, n. 1; Bish. Cr. L. §§ 746, 749.

<sup>3</sup> *Brown's case*, 112 Mass. 409.

<sup>4</sup> 32 N. J. L. 141.

<sup>5</sup> *In re Hughes*, Phillips L. (N. C.) 57, 64.



person.<sup>1</sup> The same rule appears to have prevailed in Pennsylvania from an early period.<sup>2</sup> It was said by the supreme court of Vermont in 1868, in the case of Greenough,<sup>3</sup> who was charged with obtaining money by false pretences in Illinois, that it had frequently been held "that the crime charged need not be a felony in the State where it is alleged to have been committed, or an offence at common law." The supreme court of Wisconsin in *In re Hooper*,<sup>4</sup> said that the weight of judicial construction was that the words "treason, felony, or other crime," embraced "any act forbidden and made punishable by the laws of the State making the demand." This opinion was affirmed in *State v. Stewart*,<sup>5</sup> in 1884. The decision amply sustains the declaration of Judge Choate, in Leary's Case,<sup>6</sup> in the United States district court for the Southern District of New York, in 1879, that "it is now settled by a great preponderance of authority, State as well as Federal, that the word 'crime' in this clause of the Constitution embraces every species of offence made punishable as a crime by the laws of the State making the demand, even though it were not a crime by the common law or the laws of other States; and even though for the first time made a crime by a law passed subsequently to the adoption of the Constitution and the passage of this act of Congress."

<sup>1</sup> 24 Am. Jur. 230.

<sup>2</sup> Pa. L. J. 424; 1847. "In Pennsylvania, the ordinary practice with the executive is to issue his warrant of surrender, whenever a requisition is supported by an indictment, duly accompanied by executive averment that the particular offence is a crime in the State where it was committed, and by an affidavit that the defendant has fled from such State into the one where the warrant is demanded. This is in conformity with the almost unbroken practice of the Commonwealth, from the formation of the Federal Constitution to the present time, and in obedience not only to the repeated opinions of the legal advisers of the executive, but to the judgment of the Attorney-General of the United States, to whom, at an early period, the question was submitted."

<sup>3</sup> *In re Greenough*, 31 Vt. 279.

<sup>4</sup> 52 Wis. 699. The court cited *Kentucky v. Denison*; *Taylor v. Taintor*; *Cooley on Con. Lim.* p. 16, n. 1; *Brown's Case*, 112 Mass. 409; *Clark's Case*, 9 Wend. 212; *People v. Brady*, 56 N. Y. 182; *People v. Pinkerton*, 17 Hun, 199; *Hurd on Habeas Corpus*, 597.

<sup>5</sup> 60 Wis. 587.

<sup>6</sup> 10 Ben. 197.



§ 529. **Term "person."** — The term "person" includes all persons, whether citizens of the demanding or of any other State.<sup>1</sup> This construction is believed to have uniformly been given to the term and to have been acted upon, and is so clear and necessary as not to require citation of authority.

§ 530. **Term "charged."** — The term "charged" applies to persons convicted as well as to persons merely sought for the purpose of trial. Where a person is convicted of crime, his sentence of imprisonment can be satisfied only by actual service of his term in prison. Hence, if he escapes, the term ceases to run, and he may, after its nominal expiration, be brought back to serve the unexpired balance of his term.<sup>2</sup> On July 10, 1885, Governor Hill of New York rendered a decision in the case of one Carter, for whose rendition a requisition had been made by the governor of Delaware. Carter was convicted of felony in Delaware in 1873, and sentenced to imprisonment for ten years from December 10, 1873, to December 9, 1883. On September 3, 1877, he escaped from prison and fled the State. The question was, whether an escaped convict could be returned to prison and compelled to serve out the remainder of his sentence after the expiration of the period for which he was sentenced. Governor Hill held that he could, and ordered the surrender.<sup>3</sup> This decision was affirmed by Governor Hill in the case of James Hope, another Delaware convict, on November 23, 1889, though the fugitive was discharged on other grounds.

<sup>1</sup> Opinion of Governor Fairfield, of Maine, 24 Am. Jur. 232.

<sup>2</sup> Dolan's Case, 101 Mass. 219 ; Hallan v. Hopkins, 21 Kan. 638.

<sup>3</sup> Governor Hill cited 1 Hale's Pleas of the Crown, 602 ; 1 Bish. Crim. Proc. 3d ed., §§ 1382-1385 ; *Ex parte Edwards*, 3 Crim. Law Mag. ; Clerk v. Com., 31 Gratt. 777 ; State v. Cockerham, 2 Iredell L. 204 ; *Ex parte Clifford*, 29 Ind. 106 ; Dolan's Case, 101 Mass. 219 ; Hallan v. Hopkins, 21 Kan. 638.

## CHAPTER II.

## LEGISLATION.

1. *Acts of Congress.*

§ 531. **Constitutional Provision not Self-executing.** — The constitutional provision is not self-executing. It specifies neither the authority upon whom the demand is to be made nor the form of the demand, nor the methods to be pursued in recovering the fugitive. These defects were very soon disclosed in a case that arose between Pennsylvania and Virginia. On June 4, 1791, Governor Mifflin of the former State made an application to the governor of Virginia for the surrender of three men. Accompanying the application were a memorial addressed to Governor Mifflin by the Pennsylvania Society for Promoting the Abolition of Slavery, asking that a demand for the surrender of the fugitives be made, and certificates of the prothonotary of Washington County, Pennsylvania, that the alleged fugitives had been indicted there in November, 1788, for forcibly abducting a free negro, named John, in order to sell him as a slave, in violation of the act of the General Assembly of that State. The reply of the governor of Virginia is dated at Richmond, July 8, 1791, and was from Beverly Randolph, then governor of that State, though by some neglect he omitted to sign it. It inclosed an opinion of James Innis, attorney-general of Virginia, dated June 20, 1791, which the governor approved. The grounds taken in the opinion were that the offence charged did not fall within the constitutional provision. It was not treason or felony, because the indictments stated the taking away of the negro to have been violently, not feloniously. It did not come under the head of "other crimes," which must be such as the State making the demand had exclusive jurisdiction of. There must be a defect in the jurisdiction of which the demand

was made, and an exclusive jurisdiction in the State making the demand. In the present case, the offence by the laws of Virginia would amount, as between the parties, only to a trespass; as between the offenders and the commonwealth, only to a breach of the peace. In the former case, the remedy followed the persons, and there was no defect in the jurisdiction of the courts of Virginia. In the latter case, the offenders might appear by attorney to the indictment. If acquitted, there would be no need to demand them. If convicted, it would then be time to make the demand. It was presumed that in these respects the laws of Pennsylvania were assimilated to those of Virginia. If they were, the offences stated did not appear to come within the Constitution. It was also necessary that there should be proof that the offender had fled to and was within the State on which the demand was made. The letter of Governor Mifflin contained no such proof. But, said the attorney-general, assuming that all these requirements had been satisfied, no method of arrest and surrender had been provided for. Neither the constitution of the State nor of the United States, nor any law made under them, directed the mode, or delegated an authority, by which the magistracy of the State could acquire control of the offender's person. It could, therefore, only be acquired by force, which would be unjustifiable. On July 18, 1791, Governor Mifflin transmitted the correspondence to President Washington, in order that he might invoke the interposition of Congress. In his letter Governor Mifflin said:—

“The opinion which the attorney-general of Virginia has given upon this subject, as far as it respects the nature of the offence, is, I conceive, inaccurate, and could not have been given with a previous knowledge of the law of Pennsylvania on the subject.”

He then refers to the law, making the offence subject to fine and imprisonment at hard labor, and continues:—

“The fact charged, therefore, is a crime, made such by the laws of Pennsylvania; partaking of the nature of a felony, it is certainly included in the constitutional description of ‘treason, felony, or other crime;’ and, although an action of trespass might be main-

tained in Virginia by the injured individual to recover damages for his personal wrongs, yet it is obvious that no indictment, no trial, no conviction, no punishment in the public name, could take place, according to the provisions of our legislature, but under the authority of Pennsylvania, within her jurisdiction, and in the county where the offence was committed. It is equally certain that the laws of the State in which the act is committed must furnish the rule to determine its criminality, and not the laws of the State in which the fugitive from justice happens to be discovered."

§ 532. **Opinion of Edmund Randolph** — President Washington referred the matter to Edmund Randolph, Attorney-General of the United States, who, on July 20, 1791, made an elaborate report, which is summarized here because of its importance as a contemporaneous construction of the constitutional provision by an eminent legal authority, who, as we have before seen, as attorney-general of Virginia was also called upon to interpret the provision in the Articles of Confederation.<sup>1</sup> Mr. Randolph said that the first requisite was that the person should be *charged*. This term he said was "sufficiently technical to exclude any wanton or unauthorized accusation from becoming the basis of the demand." It would be applicable to the finding of a bill by a grand jury, and, at least, required some sanction to be given to the suspicion of guilt by a previous investigation. In the case in question a grand jury convened before two justices of the supreme court of Pennsylvania had made it, and should such a procedure as that be declared incompetent as a charge, the object of the article must either be defeated or be truly oppressive. The person, said Mr. Randolph, must also be charged with a *crime*. He thought the words "or other crime" were not synonymous with felony, and did not necessarily mean offences having the quality of felony. He observed that "crimes, going deep into the public peace, may bear a milder name and consequence; and yet it would be singular to shelter those who were guilty of them, because they were not called and punished as felonies." The next requisite, he said, was that the person charged with a crime

<sup>1</sup> *Supra*, § 519.

must also flee from justice. Some species of proof on this point was indispensable, otherwise the most innocent citizen might be carried in chains from his own State to another. The communication of the governor of Pennsylvania should have been accompanied by the return of a public officer on some process, or an affidavit. It appeared in fact from a recent communication that one of the alleged fugitives had really been taken and committed, and that the other two were not found.

The next requisite, continued Mr. Randolph, was that a person charged with a crime must not only flee from justice, but he must be *found* in another State. At first it might seem unimportant whether he was so found or not, because, if he were not there, he could sustain no injury from arrest. Yet there might be inconvenience involved, and trouble and expense incurred. Hence it was made a pre-requisite that the culprit shall be found in the State, that is, that some satisfaction be given that the government would not be put upon a frivolous search. In the case under consideration there was no legal exhibit to show that the fugitives had been so found, and from what had been above stated it was presumable that one of them still remained in custody in Pennsylvania. The person charged with crime fleeing from justice and found in another State, was, according to the Constitution, to be delivered up to the State *having jurisdiction*. And in this relation, said Mr. Randolph, he was compelled to differ from the attorney-general of Virginia on two points. The latter said that "there must be a defect in the jurisdiction of the State from which the demand is made, and an exclusive jurisdiction in the State making the demand; and that the executive of Virginia cannot comply with such a demand, until some additional provisions by law shall enable them to deliver up the offenders." Mr. Randolph said that it was notorious that the crime was cognizable in Pennsylvania only, for crimes were peculiarly of a local nature. Therefore the two conditions were fulfilled; namely, the defect of jurisdiction in Virginia, and an exclusive jurisdiction in Pennsylvania. Mr. Randolph further said:—

“ But if it were conceived, that Virginia might chastise offences against Pennsylvania, or, that an action might be maintained in Virginia for what is a crime in Pennsylvania, it would not follow that the latter could not demand a malefactor from the former ; for the clause in the Constitution was obviously dictated by a wish to prevent that distrust which one State would certainly harbor against another, in situations so capable of abuse. Besides, it corresponds with the words of the Constitution, if the State demanding *has a jurisdiction*, although it might not be an exclusive one. And these observations would have equal weight if the Federal courts in Virginia could animadvert on crimes arising within the limits of Pennsylvania. But the Constitution directs that trials ‘ shall be held in the State where crimes shall have been committed.’ ”

Mr. Randolph said he further differed from the attorney-general of Virginia in not discovering the disability of Virginia to deliver up the offenders. It had sometimes been fancied that by the delivering up was meant only that the State from which the demand was made should permit the fugitives to be apprehended within its territory, or express an approbation that they might be ; but as a State could not be said to deliver up without being active, and as it might disturb the tranquillity of one State if the officers of another were at liberty to seize a criminal in its limits, the natural and safe interpretation was that the delivery must come from Virginia. It seemed that to this duty the executive of Virginia offered no objection, but contended that her constitution and laws and those of the United States being silent as to the manner and particulars of arrest and delivery, they could not as yet move in the affair. Mr. Randolph said : —

“ To deliver up is an acknowledged Federal duty ; and the law couples with it the right of using all incidental means in order to discharge it. I will not inquire here how far these incidental means, if opposed to the constitution and laws of Virginia, ought, notwithstanding, to be exercised ; because McGuire and his associates may be surrendered without calling upon any public officer of that State. Private persons may be employed, and clothed with a special authority. The attorney-general agrees that a law of the

United States might so ordain ; and wherein does a genuine distinction consist between a power deducible from the Constitution, as incidental to a duty imposed by that Constitution, and a power given by Congress as auxiliary to the execution of such a duty? Money, indeed, must be expended ; and a State may suspend its exertions until the preliminary proofs are adduced. I cannot undertake to foresee whether the expending State will be reimbursed. If the Constitution will uphold such a claim, it will, doubtless, be enforced. If it will not, it must be remembered that that instrument was adopted with perfect free will.

“ From these premises I must conclude that it would have been more precise in the governor of Pennsylvania to transmit to the governor of Virginia an authenticated copy of the law declaring the offence ; that it was essential that he should transmit sufficient evidence of McGuire and others having fled from the justice of the former, and being found in the latter ; that, without that evidence the executive of Virginia ought not to have delivered them up ; that with it they ought not to refuse.”

§ 533. **Act of 1793.** — On October 27, 1791, President Washington laid the preceding report of Edmund Randolph, together with the correspondence between the governors of Pennsylvania and Virginia, before Congress. The record of the proceedings of Congress on the subject is very meagre. The bill to give effect to the constitutional provision was originated in the Senate, whose debates were not then published. It was reported by Mr. Cabot, a senator from Massachusetts, from a committee appointed to consider the subject, and the first record we find is that on January 4, 1793, the Senate resumed the second reading of the bill and the consideration of the report of the committee thereon, and that after debate the matter was further postponed. On January 18, 1793, the bill was passed and sent to the House. On January 21, it was read twice in the House and committed. On February 4, the House resolved itself into a committee of the whole on the subject, and after some debate the chairman reported an amendment, which was read and agreed to, and the bill, with the amendment, was ordered to lie on the table. On the following day, the bill, together with the amendment agreed on, was read the



third time, and was passed by a vote of 48 yeas to 7 nays. The amendment of the House consisted in striking out the word "deemed" in the first section. On the same day, February 5, the amendment of the House was agreed to by the Senate;<sup>1</sup> and on February 12, 1793, the act was approved by the President. This act runs as follows:—

Chap. VII. *An Act respecting Fugitives from Justice, and persons escaping from the Service of their Masters.*

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That whenever the executive authority of any state in the Union, or of either of the territories northwest or south of the river Ohio, shall demand any person as a fugitive from justice, of the executive authority of any such state or territory to which such person shall have fled, and shall moreover produce the copy of an indictment found, or an affidavit made before a magistrate of any state or territory as aforesaid, charging the person so demanded, with having committed treason, felony or other crime, certified as authentic by the governor or chief magistrate of the state or territory from whence the person so charged fled, it shall be the duty of the executive authority of the state or territory to which such person shall have fled, to cause him or her to be arrested and secured, and notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear: But if no such agent shall appear within six months from the time of the arrest, the prisoner may be discharged. And all costs or expenses incurred in the apprehending, securing, and transmitting such fugitive to the state or territory making such demand, shall be paid by such state or territory.

SECT. 2. *And be it further enacted,* That any agent, appointed as aforesaid, who shall receive the fugitive into his custody, shall be empowered to transport him or her to the state or territory from which he or she shall have fled. And if any person or persons shall by force set at liberty, or rescue the fugitive from such agent while transporting, as aforesaid, the person or persons so offending shall, on conviction, be fined not exceeding five hundred dollars, and be imprisoned not exceeding one year.<sup>2</sup>

<sup>1</sup> Benton's Abridgment, 417, and note.

<sup>2</sup> 1 Stat. at L. 302.



The place in the first section from which the word "deemed" was stricken is matter of conjecture, but the only place where it seems that the word could have stood is between the words "person" and "as," making the original clause read "any person deemed as a fugitive from justice;" or between the words "as" and "authentic," which would make the original bill read "certified as deemed authentic," instead of "certified as authentic," as the act runs.

The act contains two other sections, which relate to the recovery of fugitives from labor. The abolition of slavery has rendered it unnecessary to consider those sections in this place.

§ 534. **Act of 1793 reproduced in Revised Statutes.** — The act above quoted has been reproduced in the Revised Statutes of the United States in the following form: —

"SECT. 5278. Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, it shall be the duty of the executive authority of the State or Territory to which such person has fled to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within six months from the time of the arrest, the prisoner may be discharged. All costs or expenses incurred in the apprehending, securing, and transmitting such fugitive to the State or Territory making such demand, shall be paid by such State or Territory.

"SECT. 5279. Any agent so appointed who receives the fugitive into his custody, shall be empowered to transport him to the State or Territory from which he has fled. And every person who, by force, sets at liberty or rescues the fugitive from such agent while so transporting him, shall be fined not more than five hundred dollars or imprisoned not more than one year."

The act of 1793 is not, however, by any means to be considered as a finality. Congress might enact further laws covering the whole ground, or might impose the duty of arresting and surrendering fugitives upon the Federal authorities. There is nothing in the Constitution that requires the demand to be made upon the governor of a State, or upon any other State authority, executive or judicial.<sup>1</sup>

§ 535. **Constitutionality of Act of 1793.** — The constitutionality of the act of 1793 was considered by the Supreme Court of the United States in the case of *Prigg v. Commonwealth of Pennsylvania*,<sup>2</sup> in 1843. That case involved only the sections of the act relating to the recovery of fugitive slaves, but Mr. Justice Story in an opinion which, so far as it related to the question of the constitutionality of the law,

<sup>1</sup> The Nation, vol. xxviii. pp. 70, 98. On March 11, 1840, Mr. Lumpkin, of Georgia, submitted to the Senate a set of resolutions of the legislature of that State, with accompanying documents, in favor of Congress amending the act of Feb. 12, 1793, to carry into effect sec. 2, art. 4 of the Federal Constitution, relating to surrender of fugitives from justice between the States, so as to authorize, (1) the demand to be made on the circuit judge of the United States having jurisdiction in the State where the fugitive might be found; (2) to require such judge, upon demand being made in due form of law, to issue his warrant, to be directed to the marshal of the United States in the said State, to arrest and deliver the fugitive to the agent duly authorized to receive him, who should be named in the warrant; (3) to require each marshal to whom any such warrant should be delivered, forthwith to execute it; (4) and to make it obligatory upon said district judge mentioned in said act to surrender any person who might be found in any State or Territory, and who was charged in any other State or Territory with the commission of any act which constituted a crime by the laws of said State or Territory where he was so charged, to the executive authority of the State or Territory where the offence was alleged to have been committed. . Sen. Docs., vol. iv., 26th Cong. 1st Sess. (273).

<sup>2</sup> 16 Pet. 539. Mr. Justice Bradley, delivering the opinion of the majority of the Supreme Court in *Ex parte Siebold*, 100 U. S. 371, 391, said that that court decided in *Kentucky v. Denison* (24 How. 66), that Congress, by the act of 1793, imposed a duty upon the governor of a State respecting the surrender of fugitives from justice which it had no authority to impose, and which the government of the United States could not enforce, except through its own agents. At the same time, however, the court said that Congress might authorize a particular State officer to perform a particular duty, and to this extent the act of 1793 was held to be valid. The power to authorize a State officer to do a particular thing is not correlative to the power to coerce him if he declines. *Matter of Briscoe*, 51 How. Pr. 422.

was concurred in by all the members of the court, said: "We hold the act to be clearly constitutional in all its leading provisions, and, indeed, with the exception of that part which confers authority upon State magistrates, to be free from reasonable doubt and difficulty upon the grounds stated." The constitutional provision does not refer to the Territories of the United States, but the act of 1793 includes the Territories as well as the States. Upon this ground its constitutionality has on several occasions been attacked. In the case of the *State v. Loper*,<sup>1</sup> in 1842, a fugitive was arrested in Georgia on a warrant issued by a justice of the peace on a charge of crime committed in the Territory of Florida. His discharge was sought on *habeas corpus* on the ground that the Constitution made no provision for the surrender of a fugitive from a Territory, and that the act of 1793, so far as it related to the Territories, was unconstitutional and void. The court declined to decide the question, holding that whatever might be the scope of the constitutional provision and the consequent legislative power of Congress, the arrest and detention of the fugitive were lawful both under the law of nations and the common law of the land. In the *Matter of Romaine*,<sup>2</sup> in California, the court refused to decide whether the constitutional provision applied to fugitives from a Territory, and refused to discharge the prisoner on the ground that the statute of California expressly included such fugitives. In *Ex parte Morgan*,<sup>3</sup> in 1883, Judge Parker, of the United States district court for the Western District of Arkansas, expressed the opinion that the act of 1793 was constitutional, — not, perhaps, under the rendition clause of the Constitution, but under the clause conferring upon Congress power to regulate the Territories. The difficulty with this reasoning is, that it holds good only as to fugitives from the States to the Territories, or from one Territory to another, and not as to fugitives from the Territories to the States. It seems safer and more philosophical to place the validity of the act upon the obvious spirit and intention of the Constitution; and this

<sup>1</sup> 2 Ga. Dec. 33.

<sup>2</sup> 23 Cal. 585.

<sup>3</sup> 20 Fed. Rep. 298.

seems to have been the view taken by the Supreme Court in *Ex parte Reggel*,<sup>1</sup> in which it was held that the act must be given the same effect in the case of a fugitive from a State to a Territory, as where the demand is made upon the governor of a State.

§ 536. **Indian Tribes.** — In *Ex parte Morgan*<sup>2</sup> it was held that the act of 1793 did not authorize compliance with a demand of the principal chief of the Cherokee nation. The court held that the power of the governor of a State to deliver up a fugitive criminal was derived exclusively from the Federal Constitution and the act of Congress passed in pursuance thereof, and that the Cherokee nation was neither a State nor a Territory, and consequently not within the purview of the act. As has been seen, a different view was taken in the case of *State v. Loper*,<sup>3</sup> in which it was held that, assuming the constitutional provision to be insufficient and the act of 1793 invalid, the governor of a State could surrender a fugitive on the demand of the executive of a Territory under the law of nations and the common law. This theory is defended in a criticism of *Ex parte Morgan*, in the *American Law Review*,<sup>4</sup> in which it is contended that the governor of Arkansas had the right, outside of the Constitution and the act of Congress, either to expel the fugitive or to deliver him up to the Cherokee nation. These, however, are distinct propositions. The right of expulsion does not include the right to deliver up a fugitive criminal on the demand of a foreign authority, and such in many respects is the chief of an Indian tribe. It was held by the Supreme Court of the United States in *New York v. Miln*,<sup>5</sup> Story, J., dissenting, that an act of the State of New York, which inflicted upon the master of a vessel arriving from a foreign port, who neglected to report to the mayor, or recorder, an account of his passengers, was not a regulation of commerce, but of police, and was not in conflict with the Constitution

<sup>1</sup> 114 U. S. 642. A general declaration of the constitutionality of the act is found in *In re Roberts*, 24 Fed. Rep. 132; *Roberts v. Reilly*, 116 U. S. 80.

<sup>2</sup> *Supra*, § 535.

<sup>3</sup> *Supra*, § 535.

<sup>4</sup> Vol. xviii. p. 690.

<sup>5</sup> 11 Pet. 102; 1837.

of the United States; and it was said that the States possessed the power to repel from their borders objectionable persons. But it has been held by the Supreme Court that the States do not possess the power to extradite criminals to a foreign country, because it involves an act of intercourse resting exclusively with the general government.<sup>1</sup> The power of making treaties with the Indian tribes and of regulating our relations with them generally, is exclusively vested in the Federal government, and it would therefore seem to be forbidden to the States to enter into relations of extradition with them. An examination of the treaties with the Indian tribes discloses that in many of them a stipulation is inserted for the delivery up of offenders who have sought asylum among such tribes.

§ 537. **District of Columbia.** — By the sixth section of the act of March 3, 1801,<sup>2</sup> Congress made special provision for the rendition of criminals taking refuge in the District of Columbia. This provision is now embodied in the Revised Statutes relating to the District of Columbia, as follows: —

“SECT. 843. In all cases where the laws of the United States provide that fugitives from justice shall be delivered up, the chief-justice of the supreme court shall cause to be apprehended and delivered up such fugitive from justice who shall be found within the District, in the same manner and under the same regulations as the executive authority of the several States are [*sic*] required to do by the provisions of sections fifty-two hundred and seventy-eight and fifty-two hundred and seventy-nine, Title LXVI. of the Revised Statutes, ‘Extradition;’ and all executive and judicial officers are required to obey the lawful precepts or other process issued for that purpose, and to aid and assist in such delivery.”

This law does not cover the case of a fugitive from the District. Such a case is covered by section 1014 of the Revised Statutes of the United States.

§ 538. **Offenders against Federal Law.** — By section 33 of the Judiciary Act of 1789,<sup>3</sup> provision was made for the recovery of fugitive offenders against the laws of the United

<sup>1</sup> *Supra*, § 58.

<sup>2</sup> 2 Stat. at L., 115.

<sup>3</sup> 1 Stat. at L., 91.

States. With modifications in accordance with section 4 of the act of March 2, 1793,<sup>1</sup> and with section 1 of the act of August 22, 1842,<sup>2</sup> this provision is reproduced in the Revised Statutes of the United States, as follows: —

“SECT. 1014. For any crime or offence against the United States, the offender may, by any justice or judge of the United States, or by any commissioner of a circuit court to take bail, or by any chancellor, judge of a supreme or superior court, chief or first judge of common pleas, mayor of a city, justice of the peace, or other magistrate, of any State where he may be found, and agreeably to the usual mode of process against offenders in such State, and at the expense of the United States, be arrested and imprisoned, or bailed, as the case may be, for trial before such court of the United States as by law has cognizance of the offence. Copies of the process shall be returned as speedily as may be into the clerk's office of such court, together with the recognizances of the witnesses for their appearance to testify in the case. And where any offender or witness is committed in any district other than that where the offence is to be tried, it shall be the duty of the judge of the district where such offender or witness is imprisoned, seasonably to issue, and of the marshal to execute, a warrant for his removal to the district where the trial is to be had.”

§ 539. Cases under Section 33 of the Act of 1789; § 1014, Revised Statutes. — Several cases have arisen under this law. In *United States v. Shepard*,<sup>3</sup> in 1870, a motion was made in the United States district court for the eastern district of Michigan to quash an information filed by the district attorney against the defendant. A certified copy of the information was taken to Chicago and the United States district judge for the Northern District of Illinois, on proof of the identity of the accused, but upon no other evidence of probable cause than such copy, indorsed thereon his warrant for the arrest of the defendant, who was arrested and taken to Detroit. The court held that the information was filed without right or authority; that the arrest and holding to bail were unauthorized; and on both

<sup>1</sup> Id. 334.

<sup>2</sup> 5 Id. 516.

<sup>3</sup> 1 Abbott's U. S. 431.

grounds refused to hold the accused to answer. In regard to the question of the arrest, the court said that had there been any showing for the arrest at Chicago, supported by oath or affirmation, it would not be proper to inquire whether the evidence was sufficient to justify the issuance of the warrant by the district judge in Illinois; but that when it was alleged that there was no case supported by oath or affirmation, and the illegality of the warrant was made the basis of an application to stop all further proceedings, it was the duty of the court to inquire whether the fact was as asserted. In *Re Alexander*,<sup>1</sup> in 1871, before Judge Lowell in the United States district court for Massachusetts, the district attorney applied for a warrant to send the prisoner to the district of Louisiana for trial on a criminal charge under the laws of the United States. The prisoner had been brought before a commissioner on a complaint, and the only evidence of probable cause was a certified copy of an indictment returned to the United States circuit court for the district of Louisiana. No evidence was offered by the prisoner, and the case was by consent of parties spread upon the records of the court for its decision. Judge Lowell held that while, under the Massachusetts practice, the prisoner could have produced evidence to show why he should not be removed, yet as the indictment stood uncontradicted it was sufficient. And a warrant was accordingly issued. The question whether the indictment is sufficient is not for the judge to whom the application for the order of removal is made.<sup>2</sup>

By an act of June 17, 1870, Congress established a police court in the District of Columbia to try certain offences without a jury, but provided that an appeal should lie from the police court to the criminal court of the District, in which the case could then be tried by a jury. An information was filed

<sup>1</sup> 1 Lowell, 530. Judge Lowell said it was not necessary to decide the question whether, when a person had been indicted in one district, the court of that district could issue a warrant to arrest him, wherever found, in the United States. It had been so held by Taney, Attorney-General, 2 Op. 564, and appeared to be still the opinion of that office. 11 Op. 127.

<sup>2</sup> *In re Clarke*, 2 Ben. 540. But see *infra*.



in the police court charging Charles A. Dana, a citizen of New York and the editor of the New York "Sun," with criminal libel in the District of Columbia. Mr. Dana not being found in the District, a complaint was made before a United States commissioner in New York, who issued a warrant on which Mr. Dana was arrested and committed, and an application was made to the district judge for a warrant to remove him to the District of Columbia to be tried on the information. Judge Blatchford held that so much of the act of 1870<sup>1</sup> as provided for the trial of criminal libel on an information and without a jury was repugnant to article 3 and to amendment 6 of the Constitution, and refused to order him to be delivered up to be tried in what was deemed to be an unconstitutional manner. It was not doubted that section 33 of the act of 1789 applied to the removal of a person to the District of Columbia.<sup>2</sup>

The question of such removal came before Judge Dillon in 1875, in the United States circuit court for the eastern district of Missouri, in the case of Augustus C. Buell, who also was sought to be removed to the District of Columbia on a charge of criminal libel. Judge Dillon held that section 1014 of the Revised Statutes covered the case. The question involved in the case of Mr. Dana was not raised, since Mr. Buell was indicted in the supreme court of the District. The prisoner, however, was discharged on the ground of the insufficiency of the indictment. It charged that the libel was composed and written by the defendant in the District of Columbia in the form of a newspaper article, and printed in the "Detroit Free Press," in the State of Michigan, and afterwards, to wit, on the day and year aforesaid, was published by him in the District of Columbia. Judge Dillon said that it was only necessary for the pleader to have averred that the defendant did compose and publish the libellous matter, setting it out, within the District of Columbia. He said that it seemed doubtful whether the indictment intended to charge a substantive publication by the defendant in the

<sup>1</sup> 18 Stat. at L. 193.

<sup>2</sup> Matter of Charles A. Dana, 7 Ben. 1; 1873.



District of Columbia, or any publication in that District, except so far as composing a libel there for publication in a newspaper elsewhere was in law a publication in the District; and this, without more, would not be a publication in the District. The prisoner was therefore discharged. Judge Dillon said that "mere technical defects in an indictment should not be regarded; but a district judge who should order the removal of a prisoner when the only probable cause relied on or shown was an indictment, and that indictment failed to show any offence against the laws of the United States, or showed an offence not committed or triable in the district to which the removal is sought, would misconceive his duty and fail to protect the liberty of the citizen."<sup>1</sup>

§ 540. **Is a Warrant of Removal necessary in Federal Cases?** — It has been seen that in *Re Alexander*,<sup>2</sup> Judge Lowell suggested, but did not decide, the question whether, where a person has been indicted in one district, the court of that district may issue a warrant to arrest him anywhere in the United States. It has been twice held by the Department of Justice that a warrant may be so issued. The first case in which this opinion was expressed was that of Robert B. Randolph, who, in 1833, because of his dismissal from a lieutenancy in the navy, committed an assault upon President Jackson, within the jurisdiction of the courts of the District of Columbia. It having been ascertained that Randolph had subsequently gone into Virginia, a question arose as to his arrest, and was referred to the Attorney-General of the United States for an opinion. In his opinion, rendered May 14, 1833, the Attorney-General, Taney, afterwards Chief Justice, advised that the power of arrest given by section 33 of the act of 1789 was conferred in general terms, and that, so far as respected a judge or justice of the United States, the power

<sup>1</sup> *In re Buell*, 3 Dill. 116, 120. A note of the reporter states that Mr. Buell was again arrested on another indictment found in one of the courts of the District of Columbia, and was discharged by Treat, J., in the circuit court, on *habeas corpus*, on the ground that the indictment was found by a grand jury of a court having no jurisdiction of the case.

<sup>2</sup> *Supra*, § 539.

was not even confined to his district or circuit, but that his warrant would run throughout the United States.<sup>1</sup> No action, however, appears to have been taken on this opinion, since no prosecution against Randolph was instituted.<sup>2</sup>

The question of arrest again came before the Department of Justice in the case of Appleton Oaksmith, in 1864. The facts in the case are that on December 8, 1864, Richard H. Dana, Jr., then United States attorney at Boston, wrote to Mr. Seward that he had trustworthy information that Oaksmith, who had been convicted in the circuit court in Massachusetts of having fitted out a vessel for the slave trade, but who had escaped from jail pending sentence, was in New Orleans. He enclosed a certified copy of the record in the case, together with the presentment of the grand jury respecting the escape, and requested that the government secure the arrest of Oaksmith, if possible. Accompanying the letter of Mr. Dana was also a statement made by Mr. Clifford, the clerk of the circuit court, enclosing a copy of the indictment. The indictment was found in the district court on December 8, 1861, and on May 8, 1862, was ordered to be remitted to the next term or session of the circuit court for trial. The trial took place at the May term of the latter court, 1862, and resulted in conviction. But, at the time assigned for sentence, Oaksmith, having escaped, could not be produced, and the case was continued from term to term, and was in that condition when the letter of Mr. Dana was written. Upon the receipt of this letter Mr. Seward referred the papers for advice to the Department of Justice. On December 10, 1864, Mr. J. Hubley Ashton, Acting Attorney-General, citing the opinion of Attorney-General Taney in Randolph's case, said: "I am of opinion that either judge of the circuit court of the United States for the district of Massachusetts has authority, under the act of September 24, 1789, section 33 (1 Stats. 91,) to issue a warrant for the arrest of Oaksmith; and that under such a war-

<sup>1</sup> 2 Op. 564.

<sup>2</sup> 8 Parton's Life of Andrew Jackson, 488. It is understood that the President refused to have the case prosecuted, and a search of the records of the District of Columbia fails to disclose the institution of any proceedings.

rant he may be lawfully arrested anywhere in the United States." Mr. Ashton further said : —

" There is another procedure, however, that may be resorted to under the statute with a view to the same end, which it may be well, perhaps, to mention in this connection. Any justice of the peace, or other local magistrate of New Orleans, as well as any United States commissioner, if there be one there, has jurisdiction under the act of 1789, to arrest Oaksmith and commit him to answer the demands of the court before whom he was convicted ; and on such commitment being made, it will be the statutory duty of the United States district judge at New Orleans ' seasonably to issue, and of the marshal of the same district to execute, a warrant for the removal of the offender ' to Boston.

" Inasmuch, however, as under the opinion of the late Chief Justice, the authority for Oaksmith's arrest at New Orleans, upon a warrant issued either by Judge Clifford or Judge Sprague, at Boston, is perfectly clear, I should suppose the government would have no difficulty in adopting that course, and applying at once to one or the other of those judges for the necessary process." <sup>1</sup>

How far the opinion given by Mr. Ashton was acted upon, it is now impossible with certainty to say. I am, however, informed by Mr. Stetson, clerk of the circuit court, that on December 23, 1864, a bench warrant for the arrest of Oaksmith was issued upon the indictment, but was never returned. Another bench warrant was issued March 9, 1865, but this also was not returned. Mr. Stetson was, therefore, unable to furnish a copy of either of the warrants. On November 9, 1872, Oaksmith was pardoned by the President, and on May 28, 1873, a *nolle prosequi* in the case was entered.<sup>2</sup>

<sup>1</sup> 11 Op. 127.

<sup>2</sup> The writer is indebted to Mr. Stetson for the following letter : —

OFFICE OF CLERK OF THE U. S. CIRCUIT COURT,  
DISTRICT OF MASSACHUSETTS.

Boston, Aug. 15, 1890.

HON. J. B. MOORE,

Third Assistant Secretary of State,  
Washington, D. C.,

DEAR SIR, — Your favor of the 15th instant is received.

The bench warrants, to which I referred in my letter of the 11th instant, as

It is undoubtedly the general impression that where an offender against the laws of the United States is found in a district other than that in which the offence was committed, a warrant must be obtained from the judge of such other district for his removal; and the practice is in accordance with this impression. It is, however, by no means clear, either upon the language of the statute or upon the reason of the matter, that it was intended to establish as between the various artificial districts of the United States a system analogous to that of extradition, or to that of the rendition of fugitive offenders against the laws of the several States. Power is

issued Dec. 23, 1864, and March 9, 1865, for the arrest of Appleton Oaksmith were issued in the case of an indictment found against him in 1861, and upon which he was convicted, but escaped before sentence. It was in this case that a *nolle prosequi* was entered May 28, 1875, after Oaksmith had been pardoned by the President. Our dockets and records disclose no other case against Oaksmith. These bench warrants were never returned. It is not customary to keep a copy of a warrant when issued, and as these warrants have not been returned I cannot furnish a copy. I am unable to say whether these bench warrants were ordered by Judge Clifford of the Supreme Court, or Judge Sprague of the district court, but think it must have been Judge Clifford, as Judge Sprague did not act in the circuit court for some time previous to his resignation, and the appointment of his successor, Judge Lowell. Judge Lowell filed his commission as District Judge, March 21, 1865. I believe these warrants were directed to the "Marshal of the District of Massachusetts, or either of his deputies," as I have never known a bench warrant to be issued in any other form. I inclose a blank warrant, such as has always been used in this district. This form is altered to suit the special case, and I have no doubt the Oaksmith warrants set forth the facts correctly. I have always supposed that the use made of a warrant, where the defendant "may be found" (see R. S., sec. 1014), is as a basis for an application for the arrest of the defendant in the State where found, and "his removal to the district where the trial is to be had." But this is the question I understand you have before you to decide.

There appear to have been no proceedings upon the issuing of these Oaksmith warrants, at least, I have no record, of any, and, generally speaking, there are no proceedings of record in such cases. The district attorney asks *orally* for a warrant, and the presiding judge directs it to issue and the clerk issues it. Usually the docket entry is, "Warrant ordered and issued." In the Oaksmith case the docket entries are, —

Dec. 23, (1864). Bench Warrant issued.

March 9, (1865). 2d Bench Warrant issued.

Respectfully,

JOHN G. STETSON,

Clerk.

conferred upon the judges in the several districts to arrest and imprison persons for offences in other districts, and in such case it is provided that a warrant of removal shall seasonably be issued. But it does not follow from this that the warrant of arrest issued by the justice or judge of the United States in the district where the offence was committed may not run outside of that district. The power of arrest being conferred in general terms, the requirement that a particular thing shall be done in a certain contingency does not necessarily confine the exercise of the power to the method prescribed for that contingency. The opinion of the Acting Attorney-General, Mr. Ashton, in the Oaksmith case, was that the statute contemplated two alternative methods of procedure. It was not, he thought, essential that the defendant should first be arrested and committed in the district where he was found, on a warrant issued in that district, and that a warrant for his removal should then be obtained, as if he were a "fugitive from justice," before he could be brought to answer in the district within which the offence was committed. It is pertinent to observe that there is nothing in the statute to show that it was intended to treat a person who had committed an offence against the laws of the United States as a fugitive from justice because he had passed from one district into another. Such a person is nowhere referred to as a fugitive from justice. It is not provided that he shall be demanded or delivered up as a fugitive from justice, or that he shall be considered as having acquired the special character which results from fleeing from one sovereignty to another. How, indeed, could a person be called a fugitive from the justice of the United States while he remained within their jurisdiction? It is not unreasonable to argue that in providing that, if an offender should be committed in a district other than that in which the offence was to be tried, it should be the duty of the judge of the district where the delinquent was imprisoned to issue a warrant for his removal, it was intended to meet the case of an offender who might escape unless he were arrested and held in advance of process from the trial district.

In this relation it is well to observe the provisions of the law of the United States touching the summoning of witnesses in criminal and in civil cases. By section 33 of the act of 1789, and the provision is substantially repeated in section 1014 of the Revised Statutes, it was provided not only that an offender, but also witnesses, found in another than the trial district, might be arrested, and imprisoned or bailed, and should then seasonably be ordered to be removed. The power to issue subpoenas was not expressly conferred, but by the 14th section of the act of 1789 it was provided that the courts of the United States should have power to issue writs of *scire facias*, *habeas corpus*, "and all other writs not specially provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of law." The power to issue subpoenas was clearly included in this grant, and without any express restriction. In an act approved March 2, 1793, entitled "An Act in addition to the Act entitled An Act to establish the Judicial Courts of the United States," section 6, we find this explicit provision: "That subpoenas for witnesses who may be required to attend a court of the United States, in any district thereof, may run into any other district: *Provided*, That in civil causes, the witnesses living out of the district in which the court is holden, do not live at a greater distance than one hundred miles from the place of holding the same."<sup>1</sup> This section is repeated in the Revised Statutes.<sup>2</sup> It has been held that the act of 1793 enlarged the powers of the courts with respect to the issuance of subpoenas for witnesses in civil causes.<sup>3</sup> The effect of the act in respect to the issuance of subpoenas in criminal cases does not appear to have been decided. But, whatever may have been the effect in such cases, it may seem strange that the power to subpoena witnesses should be more extensive than the power to arrest the offender, bearing in mind also that the power to issue warrants of removal, conferred by the act of 1789, applied to

<sup>1</sup> 1 Stat. at L. 335.

<sup>2</sup> Section 876.

<sup>3</sup> *Evans v. Hettick*, 3 Wash. C. C. 408, 417. See also *Patapsco Ins. Co. v. Southgate*, 5 Pet. 604, 617, where the point was referred to, but not decided.

witnesses as well as the offender. In respect to defendants in civil causes, the 11th section of that act said: "But no person shall be arrested in one district for trial in another, in any civil action before a circuit or district court." And by the 30th section of the act it was provided that where the testimony of a person residing more than a hundred miles from the place of trial should be necessary, his deposition might be taken *de bene esse*.

It is somewhat remarkable that more than a hundred years after the act was passed which conferred upon the Federal courts the power to issue warrants for the arrest of offenders, it should not have been expressly decided by those courts how far a warrant issued in the trial district may run. The subject would, in view of all the principles involved, appear to be a proper one for specific legislative regulation.

§ 541. **Escape of Federal Convict under Sentence.** — I am indebted to John Ruhm, Esquire, United States district attorney of the middle district of Tennessee, for the following interesting case: In the summer of 1889, one A. A. Stanton, who had been convicted of an offence against the revenue laws, and sentenced to undergo a term of imprisonment in the jail of Williamson County, in that district, escaped from prison and fled to Texas. Upon the application of Mr. Ruhm, Judge Key, of the middle district of Tennessee, issued a *capias* to the United States marshal of the northern district of Texas, at Dallas, for the fugitive's arrest and return. When the marshal received the *capias*, he consulted the United States district attorney at Dallas, who advised that he could not execute it, on the ground that, after passing sentence, the power of the trial court over the prisoner ceased, and could not again be exerted save through the medium of a writ of *habeas corpus*, or some such remedial writ, the execution of the sentence and the place of confinement being matters of executive control, subject to such limitations as were prescribed by statute. He deemed, however, the recitals in the *capias* as sufficient to justify the making of a complaint *de novo*, and on a warrant issued by a United States commissioner upon such a complaint Stanton was arrested and com-



mitted to await the orders of the Attorney-General. On the 28th of August, 1889, Mr. Ruhm addressed a communication on the subject to the Attorney-General, with a comprehensive argument, which is given below.<sup>1</sup> Prior to this the marshal

<sup>1</sup> This argument contains the reasons presented by Mr. Ruhm to Judge Key for the issuance of the *capias*, and is as follows : —

“§ 1014 of the United States Revised Statutes provides for the arrest of an offender against the laws of the United States in a district other than the one in which the offence was committed, and for extradition to the trial district. But this section is confined to the case of those who are charged with crime before they shall have been tried and convicted. ‘They shall be sent to the district *where the trial is to be had.*’

“There is no act of Congress making the escape of a prisoner, convicted by a United States court, an offence ; and there is, moreover, no statute expressly authorizing or prescribing the mode of procedure for extradition in cases where a *convicted* prisoner escapes into another district.

“§ 5409 provides for the punishment of the marshal, deputy, *or other person*, who voluntarily suffers a prisoner in his custody by virtue of process issued under the laws of the United States to escape.

“By § 5539, a prisoner convicted of an offence against the United States and held in jail or penitentiary of a State shall, in all respects, be subject to the same discipline and treatment as convicts sentenced by the courts of the State, *and* shall while so confined be *exclusively* under the control of the officers having charge of the same *under the laws of such State.*

“§§ 5576 and 5577 (Milliken and Ventrees, 1884), Code of Tennessee, make the escape of a prisoner confined in jail or penitentiary after conviction an offence against the State of Tennessee, and provide for its punishment. (See also § 5575.)

“Now, in the absence of an act of Congress making the escape of a convict an offence against the United States, I do not see how, under § 1014, which alone refers to cases before trial and conviction, Stanton can be arrested upon a warrant *de novo* in Texas for having escaped from jail in Tennessee *after having been convicted by the United States court in Tennessee.*

“On the other hand, if § 5539, placing a convicted prisoner ‘*exclusively under the control of the officers of the State under the laws of the State,*’ can be construed to mean that when a *convicted* United States prisoner escapes from jail or penitentiary and flees into another jurisdiction, he will have to be pursued by the State authorities under the extradition laws, we would be met by the anomalous condition that United States courts are powerless in such cases, and that the machinery of requisitions by and to the executives of the respective States would have to be put in motion on behalf of the United States. Of course it may be that this course might be resorted to, because we have noticed that the Tennessee statute makes the escape of a convicted prisoner an offence, and the act of Congress places the prisoner under the ‘exclusive control of the State officers under the laws of the State,’ and there is ample provision in the laws of extradition to secure the arrest of a prisoner in that manner. But to merely state the proposition is



of the middle district of Tennessee, by direction of the Attorney-General, sent a deputy to Texas to identify Stanton and bring him back to Tennessee, but the marshal at Dallas refused to deliver him up in the absence of a warrant of removal from the judge of the northern district of Texas. Early in September, 1889, however, the *capias* was executed. The Texas marshal, to whom it was directed, arrested Stanton upon it, and he was brought back to Tennessee, without any warrant of removal from the Texas court, by the deputy marshal sent to receive him, who returned the *capias* to the clerk of the court in the middle district.

## 2. State Legislation.

§ 542. Power of States to legislate. — The power of the States to pass laws supplementary to and in aid of the Constitution and the act of Congress touching fugitives from justice as between the States and Territories is firmly estab-

enough to refute the idea that such a course was ever contemplated. It certainly never was considered that the United States courts should depend upon the State authorities where one of their convicted prisoners escapes and flees into another district.

"In the absence of any other legislation, taking my position to be correct that § 1014 does not apply, it would indeed be a troublesome question to deal with. But, upon examination, we find an act of Congress embraced in § 716, U. S. Rev. St., which provides as follows: 'Courts have power to issue *all* writs *not especially provided for by statute*, which may be *necessary* for the exercise of their respective jurisdiction and agreeably to the usages and principles of law.' I submit that the power to cause the pursuit and capture of escaped convicts is 'necessary for the exercise of the jurisdiction of the United States courts,' and that the *capias* directed to be issued in this case was 'agreeably to the usages and principles of law,' there being no other writ or mode of procedure 'especially provided for by statute.'

"In this connection I would also call attention to *In re Oaksmith*, 11 Op. Atty.-Gen. 127: 'Either judge of a Federal court has authority to issue a warrant for the arrest of a criminal, and under *such a warrant he may be arrested in any part of the United States*.' See also *In re Randolph*, 2 Atty.-Gen. Op. 564 (Taney, Atty.-Gen.).

"Upon these considerations, and in the absence of any further or other authority or rule of law or practice, I submit that the *capias* for the arrest of Stanton was properly issued and directed to the marshal in Texas.

"If § 716 should be held not applicable, and if my construction of § 1014 is correct, then indeed this would be a curious *casus omissus* in legislation."

lished. The act of 1793 does not cover the whole ground. It makes no provision for the arrest of a fugitive pending a demand for his surrender, nor for the method of making arrests before or after such demand. It does not provide for the method of delivery. It refers to the "agent" of the "executive authority making such demand," but does not provide for his appointment nor for the method of delivering the fugitive to him. In these respects at least, in which the action of the State authorities is contemplated but not defined, it might be supposed that there was room for State regulation. In the case of *Prigg v. Commonwealth*,<sup>1</sup> which involved that part of the act of 1793 relating to fugitives from service, Mr. Justice Story, in delivering the judgment of the Supreme Court that a Pennsylvania law obstructing the execution of the constitutional provision and the act of Congress was unconstitutional, expressed the opinion that the legislation of Congress on the subject was exclusive.<sup>2</sup> This opinion was *obiter*, since the Pennsylvania statute imposed a penalty upon any person who by force or violence took away from the Commonwealth any negro or mulatto for the purpose of selling or disposing of them *or of keeping them* as slaves or servants for life, and was thus clearly in conflict with the Constitution and the act of 1793. Chief Justice Taney concurred in the judgment of the court, but dissented from what Mr. Justice Story said about the exclusive legislative power of Congress. The Constitution, said the Chief Justice, was the law of each State, and no State had the power to abrogate or alter it.

<sup>1</sup> 16 Pet. 539, 622.

<sup>2</sup> In the case of *Jack v. Martin*, 12 Wend. 311, in 1834 the supreme court of New York said that the right to legislate respecting the recovery of fugitive slaves was exclusively vested in Congress. But the point really decided in the case was that the removal of a fugitive slave under the act of 1793 could not be obstructed by a writ *de homine replegiando* issued under the authority of a State law. In *Houston v. Moore*, 5 Wheaton, 1, the Supreme Court of the United States held that, although Congress had legislated on the subject of the militia, yet an act of Pennsylvania, punishing privates and officers of the militia of that State who neglected or refused to serve when called upon by the President under the act of 28th Feb., 1795 (1 St. at L. 424), and providing for the trial and punishment of such delinquents by a State court-martial, was not repugnant to the Constitution and laws of the United States.

But why might not a State protect a right of property acknowledged by its own paramount law?

“Moreover,” he said, “the clause of the Constitution of which we are speaking does not purport to be a distribution of the rights of sovereignty, by which certain enumerated powers of government and legislation are exclusively confided to the United States. It does not deal with that subject. It provides merely for the rights of individual citizens of different States, and places them under the protection of the general government, in order more effectually to guard them from invasion by the States. There are other clauses in the Constitution in which other individual rights are provided for and secured in like manner; and it never has been suggested that the States could not uphold and maintain them, because they were guaranteed by the Constitution of the United States. On the contrary, it has always been held to be the duty of the States to enforce them; and the action of the Federal government has never been deemed necessary except to resist and prevent their violation.”

Thompson, J., concurred in the judgment, but dissented on the question of exclusiveness of Congressional power. Daniel, J., likewise.

Wayne and McLean, JJ., concurred in the opinion of Mr. Justice Story. All the judges agreed that the right to reclaim the slave being given by the Constitution, such reclamation directly by the master or his agent could not be inhibited and punished by a State law. Baldwin, J., thought the legislation of Congress unconstitutional. He held that such legislation was superfluous and obstructive of the provision which gave the owners of fugitive slaves all the right of removal they could have; but he concurred in the opinion that if legislation was required, the exclusive power was in Congress.

The subject of the power of the States to legislate in reference to fugitive slaves was subsequently before the Supreme Court in the case of *Moore v. Illinois*.<sup>1</sup> The plaintiff in error was convicted under a statute of Illinois for “harboring and secreting a negro slave.” The validity of this act

<sup>1</sup> 14 How. 21.

being called in question, the Supreme Court of the United States held that the statute was not in conflict with the Constitution, or with any law of the United States, as the same act might be an offence against the law of a State and also against a law of the United States. Grier, J., delivered the opinion of the court; McLean, J., dissented. Grier, J., in the course of his opinion, referring to the case of *Prigg v. Commonwealth of Pennsylvania*, said:—

“The following questions were presented by the case and decided by the court: 1. That under and in virtue of the Constitution of the United States, the owner of a slave is clothed with entire authority, in every State in the Union, to seize and recapture his slave, wherever he can do it without illegal violence or a breach of the peace. 2. That the government is clothed with appropriate authority and functions to enforce the delivery, on claim of the owner, and has properly exercised it in the act of Congress of 12th February, 1793. 3. That any State law or regulation which interrupts, impedes, limits, embarrasses, delays, or postpones the right of the owner to the immediate possession of the slave, and the immediate command of his service, is void. We have in this case assumed the correctness of these doctrines; and it will be found that the grounds on which this case is decided were fully recognized in that. ‘We entertain,’ say the court (page 625), ‘no doubt whatsoever, that the States, in virtue of their general police power, possess full jurisdiction to arrest and restrain runaway slaves, and remove them from their borders, and otherwise to secure themselves against their depredations and evil example, as they certainly may do in cases of idlers, vagabonds, and paupers. . . . But such regulations can never be permitted to interfere with or obstruct the just rights of the owner to reclaim his slave, derived from the Constitution of the United States, or with the remedies prescribed by Congress to aid and enforce the same.’ Upon these grounds, we are of opinion that the act of Illinois, upon which this indictment is founded, is constitutional, and therefore affirm the judgment.”

Mr. Justice McLean took the ground that the matter was within the exclusive legislative power of Congress, and that Congress having legislated on the subject, the States were precluded from doing so. The judgment of the court in

*Moore v. Illinois* confined the decision in the case of *Prigg v. Commonwealth* to the point actually involved in it, and recognized the power of the States to pass laws in aid of the act of Congress.

§ 543. **Decisions upon Specific State Enactments.** — The power of the States to adopt legislation auxiliary to the act of Congress respecting fugitives from justice, was recognized by Judge Speer in *In re Roberts*,<sup>1</sup> referring to §§ 54–58 of the Code of Georgia on the subject. The decisions of the State courts uniformly sustain the power of the States to adopt such legislation. In *Commonwealth v. Tacey*,<sup>2</sup> in 1843, the supreme court of Massachusetts, Shaw, C. J., held that § 8, c. 142, of the Revised Statutes of that State, which authorized any court or magistrate, on complaint against any person found in the State, charged with an offence committed in another State, and liable by the Constitution and laws of the United States to be delivered over, to issue a warrant and cause such persons to be held for examination, and imprisoned or bailed for a limited time, being in aid of the constitutional provision and not repugnant either to it or to the legislation of Congress, was valid. In *Commonwealth v. Hall*,<sup>3</sup> the same court held that the provision of the Massachusetts law authorizing the governor to issue his warrant for the apprehension of the fugitive was valid. In *Ex parte Butler*,<sup>4</sup> the court of common pleas of Luzerne County, Pennsylvania, held that the statute of that State of 1878, relative to fugitives from justice, was constitutional, except so far as the second section limited the rights of the accused to the mere question of identity when brought before a judge of a court of record on *habeas corpus*. In the *Matter of Heyward*,<sup>5</sup> in 1848, and the *Matter of Leland*,<sup>6</sup> in 1869, the superior court of the city of New York treated the provisions of the New York statute of May 6, 1839, authorizing a magistrate upon complaint on oath to issue a warrant for the arrest of a fugitive from justice, as a constitutional en-

<sup>1</sup> 24 Fed. Rep. 182.

<sup>2</sup> 75 Mass. 262.

<sup>3</sup> 1 Sandf. 701.

<sup>4</sup> 5 Met. 536.

<sup>5</sup> 18 Alb. L. J. 369.

<sup>6</sup> 7 Abb. Pr. (N. S.) 64.

actment. In the Matter of Briscoe,<sup>1</sup> however, the court held that a warrant of surrender issued by the governor in conformity with the act of Congress was valid, though certain judicial proceedings provided by the statute of 1839 had not been instituted. In *In re Mohr*,<sup>2</sup> in 1883, the supreme court of Alabama held that the provisions of the law of that State requiring proof that the person charged is a fugitive from justice was constitutional. It has been decided in California, in several cases, that the statute of that State providing for the arrest of a fugitive in anticipation of a requisition is valid.<sup>3</sup> In Knowlton's Case,<sup>4</sup> the superior court of Denver, Colorado, held that it was competent for the States to adopt legislation granting surrender on more liberal terms than those defined in the act of Congress. In *Kurtz v. State*,<sup>5</sup> in 1886, the supreme court of Florida held that the statute of that State of February 17, 1881, providing for the arrest and detention of fugitives from justice, was not in conflict with the Constitution and laws of the United States. The court referred with disapproval to the *dictum* of Mr. Justice Story in *Prigg v. Commonwealth*. In *Robinson v. Flanders*,<sup>6</sup> the supreme court of Indiana sustained the validity of the statute of that State, requiring a fugitive arrested on a warrant of the governor to be brought before the nearest judge of a circuit court of the State for identification. It has been held in Iowa, in *State v. Hufford*,<sup>7</sup> that the statutory requirement in that State, that in arresting and rendering up a fugitive thereunder it shall be made to appear that he is

<sup>1</sup> 51 How. Pr. 422.

<sup>2</sup> 73 Ala. 503. See also Jackson's case, 2 Flip. 183.

<sup>3</sup> *Ex parte White*, 49 Cal. 433 ; *Ex parte Cubreth*, Id. 435 ; *Ex parte Rosenblatt*, 51 Id. 385.

<sup>4</sup> 5 Crim. L. Mag. 250.

<sup>5</sup> 22 Fla. 36.

<sup>6</sup> 29 Ind. 10. In *Coffman v. Keightley*, 24 Ind. 509, the supreme court of Indiana, May Term, 1865, it was held that an act of that State, of March 8, 1865, which legalizes appropriations made by county boards and municipal authorities for bounties to volunteers, was not in conflict with the law or authority of the United States, or in conflict with the constitutional war-making power of the national government.

<sup>7</sup> 28 Iowa, 391.

charged with crime in the State or Territory from which he has fled, is in aid of the Constitution and the act of Congress. In *Ex parte Ammons*,<sup>1</sup> the supreme court of Ohio held that the statute of that State of March 23, 1875, was valid so far as it provided for the arrest of a fugitive on the warrant of the governor, and his commitment by a judge to await delivery to the agent of the demanding State.

<sup>1</sup> 34 Ohio St. 518.

## CHAPTER III.

## REQUISITION.

1. *Requirements of Act of Congress.*

§ 544. **Form of Requisition.** — The Constitution provides that the person charged shall be delivered up “on demand of the executive authority of the State from which he fled.” This is all that is said on the subject of the demand; but by the act of 1793 the demand must meet the following requirements: 1. It must be addressed to the executive of the State or Territory to which the person accused has fled; 2. Such person must be demanded “as a fugitive from justice;” 3. He must be charged with the commission of “treason, felony, or other crime” in the demanding State or Territory; 4. The charge may be made either by “the copy of an indictment found, or an affidavit made before a magistrate” of such State or Territory; 5. The indictment or affidavit must be “certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged fled.” These are express statutory requirements. It does not appear to be necessary that the requisition, in order to justify the issuance of a warrant of arrest and delivery, should designate some one as agent to receive the fugitive and convey him to the State or Territory having jurisdiction of the crime. On the contrary, the act of Congress says that when the five requirements above mentioned are met, it shall be the duty of the executive authority upon whom the demand is made to cause the fugitive to be arrested and secured, and notice of the arrest to be given to the executive authority making the demand, *or* to the agent of such authority appointed to receive the fugitive. And if no agent appears within six months from the time of the arrest, the prisoner may be discharged. But it has nevertheless long been the practice, because it is both appropriate and



convenient, to issue with the requisition a power to an agent to receive the prisoner and transport him to the place of trial. Thus, in 1847, the Pennsylvania Law Journal<sup>1</sup> says:—

“The ordinary form of requisition, in use by the executives of the several States, comprises, first, a demand upon the governor of the State to which the fugitive is alleged to have fled, for his surrender; secondly, a power to an agent, named therein, authorizing him to keep and secure the fugitive when surrendered; thirdly, affidavits, or a bill of indictment, setting forth the offence with which the fugitive is charged; fourthly, an affidavit to the effect that the defendant has fled from the justice of one State to the other; and fifthly, a certificate of authentication by the governor issuing the requisition.”

The papers absolutely requisite as accompaniments of the demand are a copy of an indictment found, or an affidavit made before a magistrate in the State or Territory from which the accused fled, charging the fugitive with having committed the crime, and the certificate of the governor authenticating such copy of the indictment or such affidavit.<sup>2</sup> It was held under the statute of Massachusetts, which requires the papers to “accompany” the requisition, that they need not be attached to it.<sup>3</sup>

§ 545. **An Official Act.**—The demand is to be treated as the act of the governor and not of the individual who may hold the executive office, and it remains in force after the governor who issued it has been succeeded in office by another person.<sup>4</sup> It has been held that the principal chief of the Cherokee nation is not the executive authority of a State or Territory as those words are used in the act of Congress.<sup>5</sup>

§ 546. **Nature of Charge.**—The provision that the fugitive must be charged with the offence by indictment or affidavit in the State or Territory from which he fled, means that, be-

<sup>1</sup> Vol. vi. p. 413.

<sup>2</sup> Kingsbury's case, 106 Mass. 223; Romaine's case, 23 Cal. 585; State v. Schlemm, 4 Harr. (Del.) 579; Clark's case, 9 Wend. 212, 219; Tullis v. Fleming, 69 Ind. 15; Knowlton's case, 5 Crim. L. Mag. 250.

<sup>3</sup> Kingsbury's case, 106 Mass. 223.

<sup>4</sup> Knowlton's case, 5 Crim. L. Mag. 250; Work v. Corrington, 34 Ohio St. 64.

<sup>5</sup> *Ex parte Morgan*, 20 Fed. Rep. 298.

fore he can be surrendered; it must be made to appear that he is charged before a court or magistrate in such State or Territory, competent to entertain criminal proceedings in respect of the crime alleged. It is not necessary that the court or magistrate before whom the charge is made should have jurisdiction to try the offence. It is enough that they possess jurisdiction to institute the proceedings.<sup>1</sup> Nor is it necessary that the charge or accusation against the fugitive should have been made before his flight.<sup>2</sup> To hold this to be necessary would confine the interstate process to persons who had escaped while in custody or fled while under bail.

## 2. *Requirements of State Laws.*

§ 547. **Provisions in various States and Territories.** — The statutes of Alabama, Arizona, California, Idaho, Nevada, New Jersey, New Mexico, and Texas contain no reference to the form in which the demand upon the governor must be made. The laws of Arkansas, Colorado, Florida, Illinois, Kansas, Mississippi, Missouri, North Carolina, and South Carolina provide substantially that the demand must be in accordance with the act of Congress. The acts of Georgia, Indiana, Kansas, Mississippi, Tennessee, and Virginia provide simply that the demand shall be in accordance with the Constitution and laws of the United States. The enactments of Connecticut, Maine, Minnesota, Oregon, and Washington only require the demand to be “according” or “conformable” to law. The Pennsylvania statute of 1878 makes it the duty of the governor to issue a warrant of arrest on requisition, “provided that the said requisition be accompanied with a certified copy of the indictment or information, from the authorities of such other State or Territory, charging such person with any crime in such State or Territory.” This proviso is embodied in the New York act of 1886. The code of Iowa provides that

<sup>1</sup> *Ex parte Morgan*, 20 Fed. Rep. 298; *Kentucky v. Denison*, 24 How. 66.

<sup>2</sup> Op. of Gov. Fairfield of Maine, 24 Am. Jur. 228. It is not necessary that a warrant of arrest should have been issued in the demanding State. It is the indictment or the affidavit that constitutes the charge upon which the return of the fugitive is required. *Tullis v. Fleming*, 69 Ind. 15.

the demand shall be accompanied with sworn evidence that the party charged is a fugitive from justice, and with a duly attested copy of an indictment, or a duly attested copy of a complaint, made before a court or magistrate authorized to receive the same. The statutes of Michigan make substantially the same requirement, but in an amplified form.

§ 548. **Statutes of Massachusetts, Ohio, and Delaware.** — The statutes of Massachusetts, Ohio, and Delaware contain peculiar provisions and make requirements in excess of those prescribed by the act of Congress. In the Public Statutes of Massachusetts it is provided that the demand must be accompanied with sworn evidence that the party is a fugitive from justice, and with a duly attested copy of an indictment or of a complaint made before a court or magistrate authorized to receive the same, such complaint to be accompanied with affidavits by persons having actual knowledge of the facts, and such other evidence as the governor may require. These provisions seem to contemplate that the governor shall examine the question of the guilt of the accused, rather than whether he is duly "charged," as required by the Constitution and the act of Congress, with a crime in the demanding State or Territory. But the statutes of Delaware and Ohio go still further, the law of the former State being based upon that of Ohio. They require, first, substantially the same papers to accompany the requisition as are prescribed by the Massachusetts statute, but, in addition to that, they also exact sworn evidence that the demand is made in good faith and not to collect a debt or pecuniary mulct, or to remove the person in order to serve him with civil process. Taken together these provisions appear to contemplate not only the examination of the question of the guilt or innocence of the accused, but also the investigation of the motives of the prosecution. Such requirements are inconsistent with and obstructive of the plain directions of the Constitution and the act of Congress, as will more fully be shown hereafter. They exhibit a more jealous and suspicious spirit than would be countenanced in proceedings between entirely separate and independent nations.

3. *Indictment.*

§ 549. *Expediency of using.* — In an intelligent review of interstate rendition, published in the Pennsylvania Law Journal,<sup>1</sup> in 1847, it is stated that though the act of Congress gave the election of supporting the requisition either by affidavit or indictment, there had been a growing jealousy of the former course, and an increased disposition to regard the latter as not only the safer, but the more certain method of accomplishing the objects. The courts have not gone so far in disregarding the indictment accompanying a requisition as in finding the affidavits to be defective and insufficient. Hence it is advisable, wherever possible, to furnish a copy of an indictment instead of an affidavit.

§ 550. *Questions of Pleading.* — The indictment should substantially charge the commission of a crime.<sup>2</sup> But whether the indictment is framed in accordance with the technical rules of pleading is a question for the courts of the demanding State or Territory,<sup>3</sup> as well as the question whether it charges a crime against the laws of such State or Territory.<sup>4</sup> Objection was made to an indictment found in New York on the ground: (1) That while it charged several defendants with grand larceny, a felony, it did not aver whether as principals in the first or second degree, or as accessories before or after the fact; (2) that while it charged larceny of the property of a corporation, it did not allege the corporate character of the company. It was held, on the first point, that an indictment under the New York statute against several defendants was good without averments showing the degrees of guilt; and, on the second point, that while it would seem that the corporate character of the company should have been alleged, the question of the sufficiency of the indictment in that regard should be left to the courts of the State in which it was found.<sup>5</sup>

<sup>1</sup> Vol. vi. p. 413.

<sup>2</sup> *Roberts v. Reilly*, 116 U. S. 80.

<sup>3</sup> *Ex parte Reggel*, 114 U. S. 642; *Matter of Voorhees*, 82 N. J. L. 141.

<sup>4</sup> *In re Greenough*, 31 Vt. 279; *Matter of Briscoe*, 51 How. Pr. 422; *Matter of Fetter*, 2 Zab. 311; *Op. of Supreme Court of Maine*, 24 Amer. Jur. 226; *People, ex rel. Lawrence, v. Brady*, 56 N. Y. 182.

<sup>5</sup> *In re Roberts*, 24 Fed. Rep. 132. In this case the court refused to consider

This ruling was affirmed by the Supreme Court of the United States.<sup>1</sup> It was objected to an indictment that it did not charge any crime, but, on the contrary, was void for repugnancy. It contained but a single count, which, after clearly and concisely charging the relator with acts which usually constitute the crime of embezzlement, averred by way of conclusion, "so" the defendant "did steal, take, and carry away," &c. The court said: "This form of indictment may be good under the statutes of Missouri; but be this as it may, it charges the crime of embezzlement, and the sufficiency of the *form* in which the charge is made must be left for the determination of the courts of that State."<sup>2</sup>

§ 551. *Informations.* — Each State has the right, subject to the provisions of the Constitution of the United States, to establish its own forms of pleading and process in criminal as well as in civil cases.<sup>3</sup> Hence, it has been held that where a requisition is accompanied with an information under the laws of the demanding State, charging the fugitive with a crime in that State and against its laws, it was a sufficient compliance with section 5278 of the Revised Statutes of the United States.<sup>4</sup>

certain affidavits offered by the relator in denial of his guilt. The court said it would have been different if the arrest were made on preliminary process, and before indictment. In that event investigation would be had, at least, to disclose whether there was a prosecution in good faith, and whether there was probable cause of the guilt of the person accused.

<sup>1</sup> *Roberts v. Reilly*, 116 U. S. 80. In the course of its opinion, the Supreme Court said: "The objections taken in this proceeding to the sufficiency of the indictment, which were overruled both in the district and circuit courts, and which are still relied on here, are not well founded. The indictment itself is certified by the governor of New York to be authentic and to be duly authenticated, which is all that is required by the act of Congress. It charges a crime under and against the laws of that State. It is immaterial that it does not appear that a certified copy of such laws was furnished to the governor of Georgia. The statute does not require it, and the governor could have insisted, and it is to be presumed did insist, upon the production of whatever he deemed necessary or important properly to inform him on the subject. And the courts of the United States, to whose process the relator has appealed, take judicial notice of the laws of all the States."

<sup>2</sup> *Ex parte Sheldon*, 34 Ohio St. 319.

<sup>3</sup> *Ex parte Reggel*, 114 U. S. 642; *Kentucky v. Denison*, 24 How. 66; *State v. Hufford*, 28 Iowa, 391.

<sup>4</sup> *In re Hooper*, 52 Wis. 699.

4. *Affidavit.*

§ 552. **Technical Objections.** — In 1791, before the adoption of any legislation by Congress, the attorney-general of Virginia, in a manuscript opinion which was filed at Harrisburg, Pennsylvania, took the view that no offence less than felony was within the Constitution, and that an indictment was in all cases necessary to constitute a valid charge of crime.<sup>1</sup> The act of 1793 made an affidavit competent and sufficient for that purpose. But while, under that act, the requisition may be accompanied either with a copy of an indictment or with an affidavit, the latter paper has constantly been the subject of criticism and objection, although at the same time executive and judicial officers uniformly refused to entertain technical objections to indictments. In 1847 it was said: "The records of the several States are full of instances where warrants have been refused in consequence of the informality of the accompanying affidavits; and whenever flaws can be picked in the stating of the offence, when thus set forth, both courts and governors have not hesitated to consider them as substantive and fatal defects."<sup>2</sup>

§ 553. **What constitutes an Affidavit.** — Under the act of 1793 it must appear that the affidavit was made before a magistrate, in the course of judicial proceedings, charging the fugitive with having committed a crime in the State from which he fled. A mere statement on oath, setting forth certain facts, such as may be made before a notary or a commissioner, is insufficient, and cannot be presumed to have been made before a magistrate and in the course of judicial proceedings against the person demanded.<sup>3</sup> A statement on oath purporting to have been made before a notary is clearly incompetent.<sup>4</sup> Complaint and affidavit are not convertible terms. But if the complaint sufficiently states the criminal charge and constitutes an examination so as to authorize the issuance of a warrant of arrest, and a jurat be attached, and it is properly certified by the magistrate, it will be essentially an

<sup>1</sup> 6 Pa. L. J. 415. *Supra*, § 531.

<sup>3</sup> *Ex parte Powell*, 20 Fla. 806.

<sup>2</sup> 6 Pa. L. J. 413.

<sup>4</sup> 3 Crim. L. Mag. 789.

affidavit in the meaning of the law.<sup>1</sup> The affidavit accompanying the requisition may be either an original or a copy, provided it be certified by the governor of the demanding State as authentic.<sup>2</sup> It has been held that a police magistrate of the city of New York is a magistrate within the meaning of section 5278 of the Revised Statutes of the United States.<sup>3</sup> A fugitive, named Sigismund Keller, was arrested on a warrant issued by the governor of Minnesota upon a requisition of the governor of Wisconsin, accompanying which was an affidavit charging Keller with embezzlement in Wisconsin. It was objected that the affidavit was not sworn to before a "magistrate," as required by section 5278 of the Revised Statutes. The affidavit read:—

*"State of Wisconsin, Municipal Court, City and County of Milwaukee.*

*"Alexander J. Blade, being duly sworn, on oath complains to the Municipal Court of Milwaukee County, &c. Subscribed and sworn to before me, this 7th day of November, 1888. Alexander J. Blade. Julius Meizelwich, clerk of the Municipal Court."*

Judge Nelson said:—

*"The oath was administered in the municipal court by the clerk. . . . The municipal court consists of a judge, who shall be elected as provided for in this act, and a clerk of the court. And upon the face of these papers it appears that this affidavit was taken in the municipal court, made before the court, made in presence of the presiding officer or magistrate. 'Before' means 'in presence of.' The oath being administered, as certified to by the clerk of the court, in criminal proceedings for embezzlement in the court by law having cognizance and jurisdiction of such offences, it seems to me that the attack made upon the affidavit must fail."*<sup>4</sup>

§ 554. **Statement of Offence.**—In a letter to Governor Schley, of Georgia, of August 16, 1837, in the case of two men who were charged with inveigling negroes away from that State, Governor Dunlap, of Maine, objected to the affi-

<sup>1</sup> *State v. Richardson*, 34 Minn. 115.

<sup>2</sup> *Kurtz v. State*, 22 Fla. 36.

<sup>3</sup> *Kurtz v. State*, 22 Fla. 36.

<sup>4</sup> *In re Keller*, 36 Fed. Rep. 681.



davit accompanying the requisition on the ground that it did not charge the crime positively, but only on information and belief, and that the deponent, instead of setting forth the act committed, stated his belief as to its character.<sup>1</sup> In his controversy with the governor of Georgia, Mr. Seward in a letter of June 15, 1841, took the ground that the affidavit must be at least so explicit and certain that if it were laid before a magistrate it would justify him in committing the accused to answer the charge.<sup>2</sup> In the case of John McKeown, in 1845, charged with riot and assault and battery in Pennsylvania, and in the case of Myer Christeller in the same year, charged with obtaining goods by false pretences, and with forgery in the same State, Governor Wright, of New York, refused to grant the surrender on the ground that the affidavits which accompanied the requisitions did not contain sufficient evidence of the facts to put the fugitives on their trial in New York if the offence had there been committed.<sup>3</sup> In 1847 the governor of Maryland demanded of the governor of Pennsylvania the surrender of one Isaac Brown, on a charge of murder. Accompanying the requisition was an affidavit, made eighteen months after the date of the alleged offence, in which the complainant deposed that he was fired upon and dangerously wounded on October 23, 1845, and that he had reason to believe and did believe that a certain negro man named Isaac Brown committed the assault. Mr. Champneys, the attorney-general of Pennsylvania, on May 15, 1847, advised the governor that this affidavit was insufficient to authorize the arrest and rendition of the alleged fugitive.

§ 555. **Must charge Offence in demanding State.** — The affidavit must substantially charge the commission by the accused of a crime in the demanding State or Territory.<sup>4</sup> The leading case on this subject is that of Joseph Smith, the Mormon prophet, in 1842. Smith was arrested on a warrant of the governor of Illinois, issued upon a requisition of the gov-

<sup>1</sup> Sen. Docs., vol. iv. 26th Cong. 1st Sess. [273]. For affidavit, see *infra*, § 563.

<sup>2</sup> 6 Pa. L. J. 414. See *supra*, § 553.      <sup>3</sup> 6 Pa. L. J. 419.

<sup>4</sup> 6 Pa. L. J. 414.

<sup>5</sup> *Roberts v. Reilly*, 116 U. S. 80.



ernor of Missouri, accompanying which was an affidavit, the material part of which was as follows : —

“ Lilburn W. Boggs, who, being duly sworn, doth depose and say that on the night of the 16th day of May, 1842, while sitting in his dwelling in the town of Independence, in the County of Jackson, he was shot with intent to kill ; and that his life was despaired of for several days ; and that he believes, and has good reason to believe, from evidence and information now in his possession, that Joseph Smith, commonly called the Mormon prophet, was accessory before the fact of the intended murder, and that the said Joseph Smith is a citizen or resident of the State of Illinois.”

Smith was brought before Judge Pope, district judge, in the circuit court of the United States for the District of Illinois, on a writ of *habeas corpus*, and was discharged on the ground of the insufficiency of the affidavit, because : (1) It was on information and belief, and not positive, and did not state the grounds of deponent's belief ; (2) it charged no crime ; (3) in swearing that Smith was an accessory before the fact, deponent swore to a conclusion of law, when he should simply have stated the facts and shown that they were committed in Missouri, leaving the question of law for the court ; (4) the affidavit charged no crime committed in the State of Missouri. It could not, therefore, said the court, be inferred that Smith fled from the justice of the State of Missouri, nor that he had taken refuge in the State of Illinois.<sup>1</sup> Where a fugitive was charged by affidavits with unlawfully combining and conspiring with certain persons by false pretences and devices to obtain the property of another person, with intent to cheat and defraud him, the Court of Appeals of New York discharged the fugitive, who had been taken on a warrant of surrender, on the ground of the insufficiency of the affidavits. The objections stated to them were, (1) that the false pretences were not set out, nor the means by which the cheat was to have been or was effected. This, said the court, would be required in an indictment ; and an affidavit must, if anything, be more full in its allegations than an indictment, the former being an *ex*

<sup>1</sup> *Ex parte Joseph Smith*, 3 McLean, 121.

*parte* statement, usually of the prosecutor, while an indictment is found by a body which stands indifferent between the parties, and charged upon oath to inquire of offences, and which, in finding the bill, is supposed to act upon competent proof. (2) The affidavits did not show that a conspiracy to do a wrongful act affecting the property of another was an offence in the State of Michigan, where the crime was alleged to have been committed. The court could not take judicial notice of the laws of Michigan, and in the absence of proof the presumption was that the courts of that State agreed with those of New York in their interpretation of the common law, and by the interpretation of the latter the acts charged would not constitute an offence at common law. The court also said that the fact that an inferior magistrate had issued a warrant of arrest upon the same proof as was presented to the executive of New York, did not justify the inference that a legal crime was charged in the affidavits; and moreover, the alleged warrant was in no way identified or referred to in the affidavits, and could not be considered by the executive in deciding the question presented to him.<sup>1</sup> In the case of Sigismund Keller,<sup>2</sup> above referred to, there was an affidavit which charged that "S. K., on or about the 1st day of October, 1888, at said city of Milwaukee, in said county, was then and there the clerk, servant, and employee of A. B., Son & Co., and he, the said S. K., not being then and there an apprentice, nor a person under the age of sixteen years, and while he was employed," had the care, custody, and possession of a specified sum of affiant's money, which, without affiant's consent, he embezzled and fraudulently converted to his own use. Judge Nelson, referring to sections 4418, 4667, and 4742 of the Revised Statutes of Wisconsin, held the affidavit to be sufficient. Sec-

<sup>1</sup> *People, ex rel. Lawrence, v. Brady*, 56 N. Y. 182. Decision by Andrews, J., Church, C. J., and Allen, Folger, Rapallo, Johnson, and Peckham, JJ., concurring; Graves, J., dissented. The case was brought up on a writ of error to the general term of the supreme court of New York, first judicial department, which had affirmed the judgment of the Hon. John R. Brady, one of its justices, dismissing the writ of *habeas corpus*. The judgment of the Court of Appeals reversed the judgment of the supreme court.

<sup>2</sup> *In re Keller*, 36 Fed. Rep. 681. *Supra*, § 553.

tion 4418 provides for the punishment of embezzlement. Section 4667 provides that in any prosecution for embezzlement it shall be sufficient to allege, generally, in the indictment or information an embezzlement of money to a certain amount, without specifying any particulars of such embezzlement. Under the law of Wisconsin, said the court, an indictment or information in the language and form of the affidavit, would be sufficient. Moreover, section 4742 provides that "any statute relating to the form, substance, or amendment of indictments and informations, the statement of the offence therein, and the evidence thereunder, so far as applicable, shall apply to complaints, amendments, proceedings, and trials in criminal cases before justices of the peace." It was also objected to the affidavit in this case that it alleged that the offence was committed on or about the 1st day of October, 1888, while the prisoner swore that the offence, if committed at all, was perpetrated fourteen days earlier. The court held that the petitioner could not complain that the affidavit was not specific in fixing the very day.

§ 556. **Information and Belief.** — It has been seen that it was made a ground of objection by the court to the affidavit in the case of Joseph Smith, that it was made on information and belief.<sup>1</sup> The affidavit nowhere directly charged Smith with the commission of the crime. The deponent stated that on a certain night he was shot with intent to kill, and that he believed and had good reason to believe, from evidence and information in his possession, that Smith was an accessory before the fact of the intended murder. In the case of *Ex parte Morgan*,<sup>2</sup> the affiant employed very similar language, saying "that he has reason to believe, and does believe, from information received, that one Frank Morgan did commit the crime of wilful murder." The court held that this was merely a charge upon suspicion and insufficient, and cited *Ex parte Smith*. It is stated that in June, 1889, police officers from Chicago presented to Governor Hill of New York, at Albany, a requisition from Governor Fifer, of Illinois, for the surrender of two persons, named Moreney and McDonald,

<sup>1</sup> *Supra*, § 555.

<sup>2</sup> 20 Fed. Rep. 298.

accused of the murder of Dr. Cronin, in Chicago. It is said that Governor Hill denied the application, without prejudice to its renewal, on the following grounds: "1. That the application was not accompanied with an indictment. 2. That no proof whatever was presented showing that the accused were guilty of the crime charged against them, as required by the laws of this and all other States." The application was based solely upon an affidavit made upon "information and belief."<sup>1</sup>

It has, however, been held that where the affidavit charges the crime directly and positively, it is not vitiated by the conclusion, "as deponent verily believes." "Ordinarily," said the court, "a question of pleading is to be determined by the courts in which the pleading is made. If it is conceded that this court can construe this pleading and reject it, still I think it is not faulty. It is a statement of a fact which the deponent, in testifying to, verily believes to be true. A man swears to what he believes to be true, and, when he states a fact under oath, he says he verily believes it to be true. I do not think it is faulty on that account. I think this affidavit is sufficient."<sup>2</sup>

§ 557. **Held in South Carolina to be conclusive.** — It has been held in South Carolina that a requisition accompanied with a duly authenticated affidavit is conclusive evidence that there is a valid charge against the fugitive in the demanding State. In the case in which this was held, the affidavit came from Georgia, and it was objected that the person who made it was incompetent to do so in that, not being a citizen of that State, and not contributing anything to the expenses of courts of justice, nor having any interest in the enforcement of the laws, he could not lawfully commence a prosecution there. In reply to this, the supreme court of South Carolina said: —

"It is quite sufficient to say that we are not at liberty to consider such a question. The authorities of the State of Georgia have undoubtedly recognized the fact that a prosecution has been lawfully commenced in that State, and it is not for us to question

<sup>1</sup> N. Y. Sun, June 14, 1889.

<sup>2</sup> *In re Keller*, 36 Fed. Rep. 681, 685.

it. Whether the charge has been made in proper legal form, or whether it can be sustained by legal evidence, are questions which belong exclusively to the tribunals of the State where the crime is alleged to have been committed, and they alone have jurisdiction to determine whether the laws of such State have been violated. Even, however, were the point raised a matter within our jurisdiction, we are altogether unable to discover any valid reason why a citizen of South Carolina may not commence a prosecution in the State of Georgia for an offence committed within the territorial limits of that State.”<sup>1</sup>

### 5. Certification.

§ 558. **Must be in accordance with the Act of Congress.** — The certification of the indictment or affidavit must be in accordance with the act of Congress. Thus where an affidavit was sworn to before a justice of the peace in New Orleans, it was held in New York that the certification of his official character and of the formality of his attestation by the secretary of state, instead of by the governor, of Louisiana, was insufficient.<sup>2</sup>

§ 559. **Imports Verity.** — The certification by the governor of the demanding State or Territory of the authenticity of the indictment or affidavit imports verity for the purposes of the act of Congress, and dispenses with other authentication. Thus if a copy of an indictment be so certified, it is immaterial that it is not certified by the clerk of the court with the accompanying certificate of the judge,<sup>3</sup> or that there is no seal to the certificate of the clerk of the court in which the indictment purports to have been found, and no file mark.<sup>4</sup> But the paper certified as the basis of the charge must be actually produced. Thus one Pfitzer was arrested on a warrant issued by the governor of Indiana in compliance with a

<sup>1</sup> *Ex parte Swearingen*, 13 S. C. 74 ; 1880.

<sup>2</sup> *Soloman's Case*, 1 Abb. Pr. (N. S.) 347.

<sup>3</sup> *Leary's Case*, 10 Ben. 197.

<sup>4</sup> *Hibler v. State*, 43 Tex. 196. In *Hackney v. Welsh*, 107 Ind. 253, it was held that, assuming that the question of the authenticity of the affidavit could be examined, after its certification by the demanding executive, the affidavit and signature of the prosecuting attorney of the place from which the criminal escaped were sufficient evidence of authenticity.

requisition of the governor of Illinois, in which the governor of the latter State certified that "the annexed papers, duly authenticated in accordance with the laws of Illinois, show that by affidavit in the county of Montgomery in said State, C. F. stands charged with larceny," &c. No affidavit or copy of an affidavit purporting to have been made in Montgomery county was attached to the requisition. There was a warrant issued by a justice of the peace of that county, in which it was recited that a complaint on oath had been made before him, charging the prisoner as recited in the requisition. There was also a paper in the form of an affidavit, purporting to have been made in the county of Sangamon, charging the offence as having been committed in the county of Montgomery, and that the person in question had fled to Indiana. The relator applied for a writ of *habeas corpus* to the criminal circuit court of Marion county, Indiana, which refused to discharge him. From this decision an appeal was taken to the supreme court of Indiana, which reversed the judgment of the court below on the ground that no copy of the affidavit in Montgomery county was produced to the executive of Indiana. "It was," said the supreme court, "to answer to that prosecution that the rendition was required by the governor of Illinois, and without an authentic copy of that document any warrant issued here was unauthorized." The cause was remanded to the circuit court with directions to give leave to amend the return and proceed according to the opinion of the supreme court.<sup>1</sup>

§ 560. **Certificate as of Authenticity.** — The governor of the demanding State is not required to certify that the indictment or other papers accompanying the requisition are genuine, but only that they are duly authenticated.<sup>2</sup> Where objection was made that an affidavit was not certified to be

<sup>1</sup> *Ex parte Pfitzer*, 28 Ind. 450. Two of the members of the supreme court had serious doubts whether the paper from Sangamon county purported upon its face to have been made before a magistrate, as required by the act of Congress. The Chief Justice said he did not share those doubts. But, in view of the turn the case took, the question became immaterial.

<sup>2</sup> *Hackney v. Welsh*, 107 Ind. 253.

genuine, or an original, Murray, Chief Justice of California, said: "The requisition certifies that the affidavit is 'duly authenticated according to the laws' of said State, by which I understand the governor of Ohio to certify that the paper has received the forms which prove its genuineness."<sup>1</sup> In a case before the supreme court of Ohio it was contended that the indictment accompanying the requisition of the governor of Missouri was not by him duly certified as authentic. The court held that all the act of Congress required in this regard was, "that the language employed by the demanding governor in the requisition, understood in its ordinary meaning, shows that the copy of the indictment upon which the requisition is made is authentic." The indictment in the case in question purported to have been found by a grand jury in the criminal court of Jackson county, Missouri, and to be authenticated by the attestation of the clerk of that court under its seal. The requisition said: "Whereas, it appears by the annexed papers, duly authenticated according to law, that Stephen Sheldon stands charged," &c. "This language," said the court, "fairly interpreted, is a compliance with the act of Congress which requires the copy to be certified as authentic. It negatives the idea that the copy annexed is spurious or fictitious, and shows that it is genuine." The court in substance held that where the language employed by the demanding governor in the requisition shows the copy of an indictment annexed thereto to be authentic, it is sufficient, whatever be the form of words employed.<sup>2</sup>

§ 561. **Authority of Magistrate implied from Certificate.** — It will be implied from the certification of the demanding executive that the officer who took the affidavit is a magistrate.<sup>3</sup> In Kingsbury's case,<sup>4</sup> before the supreme court of Massachusetts, the requisition of the governor of Maine stated that Drusilla P. Kingsbury, "charged with the crime of larceny (as will more fully appear by the papers hereunto

<sup>1</sup> *Matter of Manchester*, 5 Cal. 237.

<sup>2</sup> *Ex parte Sheldon*, 34 Ohio St. 319.

<sup>3</sup> *State v. Richardson*, 34 Minn. 115.

<sup>4</sup> 106 Mass. 223.

annexed, which I certify to be authentic), is a fugitive from the justice of this State," &c. Among the papers annexed was a complaint on oath before a trial justice for the county of Penobscot, Maine, charging Mrs. Kingsbury with larceny, in the usual form, sworn to October 27, 1870. It was objected that there was no formal allegation that the justice before whom the complaint was sworn was a magistrate. The court said, "The certificate of the governor sufficiently authenticates these papers as being sworn to before a magistrate."



## CHAPTER IV.

## FUGITIVES FROM JUSTICE.

1. *What constitutes a Fugitive.*

§ 562. **Person demanded as a Fugitive from Justice.** — The Constitution provides for the delivery up of persons charged in any State with treason, felony, or other crime, “who shall flee from justice, and be found in another State.” The act of Congress provides for the delivery of any such person, when he is demanded by the governor of any State or Territory “as a fugitive from justice,” of the executive authority of the State or Territory “to which such person shall have fled.” Thus both by the Constitution and the act of Congress the person to be delivered up is described as having fled from justice. It is generally and loosely said that whether the person charged is a fugitive from justice is a question of fact, to be determined like other facts upon proof. The fact that a person leaves a State while out on bail, does not prevent his being brought back as a fugitive from justice.<sup>1</sup>

§ 563. **Georgia-Maine Controversy.** — What constitutes a person a fugitive from justice in the sense of the Constitution and the act of Congress has been the subject of much controversy. The earliest case in which we find the question discussed is that between Pennsylvania and Virginia, which gave rise to the passage of the act of 1793.<sup>2</sup> Later, in 1837, we find a heated controversy on the point between the governors of Georgia and Maine. It appears that on June 21, 1837, Governor Schley, of Georgia, addressed a requisition to the governor of Maine, charging Daniel Philbrook, master of the schooner (or brig) “Susan,” and Edward Kelloran, mate

<sup>1</sup> *Matter of Hughes*, Phill. (N. C.) L. 57; *In re Greenough*, 81 Vt. 279; *Com. v. Otis*, 16 Mass. 197.

<sup>2</sup> *Supra*, § 532.

of said vessel, fugitives from the justice of Georgia, with the offence of maliciously inveigling, stealing, and conveying away a negro man-slave, named Atticus, the property of James Sagurs and Henry Sagurs, and requesting that the said alleged fugitives be delivered up to Mordecai Sheftall, Junior, the duly authorized agent of the State under the act of Congress of February 12, 1793. The requisition was based upon the following affidavit of James Sagurs : —

“ That one Daniel Philbrook, late master of the schooner ‘ Susan,’ of Boston, and one Edward Kellernan, late mate of said vessel, as deponent also believes, did, on or about the fourth day of May last, feloniously inveigle, steal, take, and carry away, without the limits of the State of Georgia, a negro man-slave, named Atticus, the property of this deponent, and his brother, Henry Sagurs ; and, further, he saith that the said Daniel Philbrook and Edward Kellernan have been guilty, as deponent is informed and believes, of a felony under the laws of this State : and, therefore, prays a warrant may issue against the said Daniel Philbrook and Edward Kellernan, that they may be dealt with according to law. And this deponent further saith, that, since the commission of said felony, the said Daniel Philbrook and Edward Kellernan have fled from this State, and are, as he believes, at this time within the limits of the State of Maine, in the United States.”

The requisition was answered by Governor Dunlap, of Maine, August 16, 1837. He said : —

“ Whatever may have been urged relative to this or any kindred subject, by individuals or self-constituted societies, the offence indicated in the affidavit, being made penal by the laws of Georgia, would, in my view, require executive interference as really and as readily as offences of any other character. I am, however, dissuaded from complying with your Excellency’s request, not from any sympathies with those who would wantonly violate the laws of a sister State, but from considerations I beg leave now to present.”

These considerations were (1) that the persons charged visited Georgia “ in the course of their ordinary business as mariners,” returned homeward “ in the usual time ” and “ by the usual route ; ” “ had stated homes to which they openly

returned ;” “ took up their residence and conducted their affairs there without concealment, and in all respects conformably to the usages of innocent and unsuspecting citizens.” Whether such a course of conduct was a fleeing from justice, so that a man might be called a fugitive, was a question of importance, but not necessary to decide. (2) Because the affidavit did not charge the crime positively, but only asserted deponent’s information and belief. (3) Because the deponent should have stated the act, instead of his belief as to its character. On September 5, 1837, Governor Schley replied to the letter of Governor Dunlap, taking issue on all points. He contended that the conduct of the fugitives in *Maine* was no evidence as to their character. Had they so acted where the offence was committed, there might have been a presumption in their favor. Governor Schley also contended that in the affidavit the act of stealing was positively sworn to, and that the only allegation made upon belief was that the fugitives were master and mate of the vessel. He also argued that under the act of 1793 the governor of Maine had no authority to inquire whether the affidavit charged a crime against the laws of Georgia ; but he quoted the law of Georgia in order that there might be no doubt of the act being a felony there. To this letter no reply appears to have been made by Governor Dunlap. But on June 25, 1838, Gov. Edward Kent, of Maine, acknowledged a requisition of Governor Gilmer, of Georgia, for the same men. Accompanying this requisition, so the acknowledgment states, was an *indictment*, charging the same offence. Governor Kent said he did not doubt that if the constitutional provision was complied with, he was bound to give the fugitives up, whatever his own views of the crime charged, or of the expediency of pursuing the fugitive, might be. But it was proper in the executive upon whom the demand was made “ to require evidence of every constitutional condition before yielding up a citizen of the State over which he presides.” He further said that the Constitution of the United States required the delivery of the accused when it was shown that he was charged with crime in another State ; that he had fled from justice ;

and that he was found in the State upon which the demand was made. It was, said Governor Kent, perhaps doubtful whether the accusation must not precede flight, but this was not dwelt on. The indictment furnished evidence of the crime. But the Constitution had superadded another condition, namely, that the accused should have fled from justice.

“ I do not suppose,” said Governor Kent, “ that a direct, immediate, and rapid flight is alone intended, or a capture upon fresh pursuit. But I do suppose the departure must be in some degree connected with the crime ; that there must be some manifest design to avoid the process of the law, and an intention of placing himself out of the reach of the officers of justice. If, for instance, a man has committed an assault and battery many years since in Maine, and had lived here for two or three years afterwards, and then removed to a neighboring State, where he had resided openly for a long time, I should not feel authorized to demand him as a fugitive from justice, because a bill of indictment had been found against him in this State, and he was found in another State ; and, of course, I should not feel authorized in yielding to the demand for a person in such case by the executive of another State. Circumstances and facts in many cases might distinctly indicate the intention of avoidance, by removal ; and the presumption might be raised without direct evidence of such intention. But I do most respectfully maintain that such ‘ fleeing from justice ’ is a distinct and explicit preliminary point to be satisfactorily established before the delivery can be demanded as a matter of right.”

Governor Kent further said that the opinion of the judges of the supreme judicial court of Maine, given to his predecessor, upon a case presented which arose prior to the questions in relation to Philbrook and Kellernan, was explicit on the point. He observed that in the papers forwarded by the governor of Georgia there was nothing to establish that the men were fugitives from the justice of that State, and to invalidate their allegations to the contrary. They alleged that they were citizens of Maine, who had gone to Georgia in the usual course of their business ; that their vessel loaded in the usual manner and time, cleared and sailed in the common form and by the accustomed route ; that they returned to their homes,

where they had remained openly transacting their business for several months; and that they did not know the negro was on their vessel till several days after sailing, when he was discovered concealed in the hold. These facts were not evidence of a fleeing from justice. The Governor concluded as follows: —

“ I beg leave to assure you that this opinion is not formed in reference to the nature of the property alleged to have been stolen, or to the peculiar relations existing in your State, and which, in some degree, are connected with this question. I fully recognize the constitutional right of Georgia to enact her own penal laws, and to make that a crime which is unknown to our laws as such, and to demand fugitives from her justice. I place the case upon the sole ground of the fair construction of the Constitution in this particular, irrespective of particular and peculiar circumstances which may become connected with the discussion. Maine assumes no right to disregard any provision of the constitutional compact, because she may incidentally aid in enforcing laws or sustaining institutions different from her own.”

The opinion of the justices of the supreme judicial court, referred to by Governor Kent, was as follows: —

“ CASTINE, June 26, 1837.

SIR, — The undersigned, justices of the supreme judicial court, to the following question propounded to them by the governor, on the 22d instant, viz.: ‘ Is it the duty of the executive of this State to cause to be delivered over to the agent of another State, at the request of the executive thereof, a citizen of this State charged (by indictment in such other State) with fraud upon one or more of her citizens, in the sale of wild lands, or in contracts for the sale of such wild lands, lying within the bounds of this State, and thereby obtaining the money and notes of said citizens under false pretences and representations in regard to the quality and value of said lands: ’ would respectfully answer, that, in their opinion, it is the [duty of the] executive of this State to cause to be delivered over to the agent of another State, at the request of the executive thereof, a citizen of this State, charged in another State, by indictment, with the fraud before set forth, which, being indicted in such State, may be presumed to be regarded there as a crime, if the

executive of this State is satisfied that such citizen has fled from justice from the State making the demand, and not otherwise.

Mr. Justice Shepey being now engaged in official duty at Machias, the undersigned have not had it in their power to communicate with him, without postponing their answer to a later period than might be deemed convenient.

NATHAN WESTON,  
NICHOLAS EMERY.

To the Governor of the State of Maine.

Governor Kent transmitted all the documents to the legislature of Maine some time late in 1838, or early in 1839; for on January 26, 1839, Mr. Litchfield, from the Committee on the Judiciary, to whom the message was referred, reported to the Senate that the whole subject was exclusively within the province of the executive department, and that it was inexpedient for the legislature to take any order in relation thereto. The committee asked to be discharged from further consideration of the subject, and that the message and documents be placed on the files of the legislature. The report was read, and accepted. It was then sent to the House for acceptance, and accepted there. On August 23, 1839, Governor Gilmer replied to Governor Kent, denying all his propositions on the law and on the facts in the case as to the fleeing from justice, and arguing upon the absoluteness of the duty of the executive to deliver up an accused person when he was demanded as a fugitive from justice in accordance with the act of 1793.<sup>1</sup>

<sup>1</sup> Sen. Docs., vol. iv. 26th Cong., 1st Sess. [273]. In this letter Governor Gilmer states that on the 20th of the preceding March, the legislature of Maine passed a law giving the governor authority to satisfy himself, by an investigation into the grounds of a demand, whether it was proper to be complied with, before he should order the arrest of fugitives from the justice of the other States. Governor Gilmer said: "According to the act of Congress passed February 12, 1793, whenever the executive authority of a State demands the arrest and delivery up of a person as a fugitive from its justice, and produces to the governor of whom the demand is made the authenticated copy of an affidavit, or true bill of indictment found, charging the person so demanded with the commission of a crime within the State demanding him, and he is found within the jurisdiction of the State of which he is demanded, the law presumes, without further proof, that he has fled from justice." In another place, he says that "unless the governments

§ 564. **Opinion of Governor Fairfield.** — The question as to what constitutes a fugitive from justice under the Constitution and the act of Congress came before Governor Fairfield, the successor of Governor Kent, of Maine, in the case of "Certain Fugitives" demanded by the governor of Massachusetts. He disapproved the suggestion thrown out by Governor Kent in his correspondence with Governor Gilmer, that the term "fugitive from justice" might be held to mean only one against whom an accusation had been made in the demanding State prior to his flight. At the same time he refused to accept the doctrine that, in order to constitute a person a fugitive from justice, it is only necessary for him to have been charged with the commission of a crime in one State and to be found in another, though he was in the former State when he committed the act. To prove this position to be untenable, he supposed the case of a person who had committed an offence, say larceny, in Maine, and continued subsequently to reside there for several years, engaged in his usual business, the offence being a matter of public notoriety and no one attempting to disturb him by a prosecution. He then removes to another State, with his family and property, not clandestinely, but openly, in the daytime and by the usual mode of conveyance; and continues his residence in the State to which he has removed for several years, pursuing his regular avocations there and demeaning himself in all respects as a good citizen. Governor Fairfield said that such a man could not be regarded

of the several States shall deliver up, upon demand, all within their jurisdiction who are charged with the commission of crimes in other States, with the same certainty that criminals are arrested by the officers of justice within the jurisdiction where their offences are committed, the people of this country have no sufficient security for the protection of their rights against the facility with which offenders can escape from the jurisdiction where alone they can be tried, and our form of government will have failed in providing for the performance of one of its most important functions, — the certain punishment of crimes." Again, he said: "The arrest of fugitives from justice can never be asked of a governor as a matter of favor, to be granted according to his discretion, as your Excellency seems to suppose. The demand must be made as a matter of right; and, if accompanied by the proof required by the law of the United States, the duty is imperative." He held that the affidavit presented with the first application established the fleeing from justice, in fact.



as a fugitive from justice. But he said that he was clearly of opinion that "where one is conscious of having committed treason, felony, or other crime in one State, and leaves that State, knowing that by remaining he is subject to a prosecution, a sufficient time not having elapsed, or other circumstances occurred, to remove all reasonable apprehension of a prosecution, he may fairly be regarded as a fugitive from justice, within the meaning of the fourth article of the Constitution."<sup>1</sup>

§ 565. **Motives of Departure not a Subject of Inquiry.** — The difficulties which are immediately suggested when we begin to inquire as to the motives with which a person left a State or Territory where he is charged to have committed a crime, have led the courts to discard the consideration of that question. In the matter of *Voorhees*,<sup>2</sup> in 1867, Chief Justice Beasley, of New Jersey, said: —

"A person who commits a crime within a State, and withdraws himself from such jurisdiction without waiting to abide the consequences of such act, must be regarded as a fugitive from the justice of the State whose laws he has infringed. Any other construction would not only be inconsistent with good sense, and with the obvious import of the word to be interpreted in the context in which it stands, but would likewise destroy, for most practical purposes, the efficacy of the entire constitutional provision."

This doctrine was adopted by the Supreme Court of the United States in *Roberts v. Reilly*,<sup>3</sup> in which the court said: —

"To be a fugitive from justice, in the sense of the act of Congress regulating the subject under consideration, it is not necessary that the party charged should have left the State in which the crime is alleged to have been committed, after an indictment found, or for the purpose of avoiding a prosecution anticipated or begun; but simply that having, within a State, committed that which by its laws constitutes a crime, when he is sought to be subjected to its criminal process to answer for his offence he has left its jurisdiction, and is found within the territory of another."

<sup>1</sup> 24 Am. Jur. 226.

<sup>2</sup> 32 N. J. L. 141.

<sup>3</sup> 116 U. S. 80.



Citing this decision, the supreme court of Minnesota, in *The State v. Richter*,<sup>1</sup> in 1887, held that it was sufficient, in legal intendment, to constitute a person a fugitive from justice, that he was not in the State to answer the charge when required. The purpose of his leaving was immaterial. In the case before the court the person charged was sought to be recovered from Minnesota to answer an indictment in Kansas. It was held to be no answer to the demand that after a plea of not guilty the defendant left the State of Kansas with the consent and by direction of the sheriff and prosecuting attorney of the county in which the indictment was pending, and went to Minnesota to answer a criminal charge there.

The definition of a fugitive from justice given by the Supreme Court in the case of *Roberts v. Reilly*, was adopted by Judge Nelson, of the United States district court for the District of Minnesota, in the case of *Keller*.<sup>2</sup> The relator was held on a warrant of rendition issued by the governor of Minnesota, in compliance with a requisition of the governor of Wisconsin for his surrender on a charge of embezzlement in the latter State. He contended that he was not a fugitive from justice, on the ground, among others, that his home was in Minnesota and that he had not fled thither. Judge Nelson said : —

“ It is not necessary that I should determine that he was a resident of Wisconsin, and had committed a crime there, and had fled to avoid prosecution. That is not necessary. If it appeared simply that he was charged with a crime committed by him in the State

<sup>1</sup> 87 Minn. 436. In *People v. Pinkerton*, 17 Hun, 199, Judge Gilbert said : “ The charge that he [the person demanded] committed the crime in that State [from which the demand proceeds], coupled with the fact that he is found in this State, is conclusive upon the question whether he is a fugitive from justice.”

The definition of a fugitive from justice given in *Roberts v. Reilly* may fairly be regarded as a more explicit statement of the rule laid down by the Supreme Court in *Ex parte Reggel*, 114 U. S. 642, in which the court said that the fugitive, who asserted that it was not shown that he was in the demanding State at the time of the alleged offence, “ was entitled, under the act of Congress, to insist upon proof that he was in the demanding State at the time he is alleged to have committed the crime charged, and subsequently withdrew from her jurisdiction, so that he could not be reached by her criminal process.”

<sup>2</sup> *In re Keller*, 36 Fed. Rep. 681 ; Nov. 20, 1888.

of Wisconsin, and that, when he was sought to be brought to justice for that crime he was found outside of that jurisdiction, and in the State of Minnesota, I think it is sufficient. The Supreme Court of the United States holds so."

Immediately afterwards, however, Judge Nelson said:—

"If a citizen of the State of Minnesota should go into the State of Wisconsin, and commit a crime in the State of Wisconsin intentionally, and afterwards, when prosecution was initiated against him, was found in the State of Minnesota, I take it that the State of Wisconsin would be justified in demanding him, and that the governor of Minnesota would send the prisoner back as a fugitive from justice, having committed a crime in another State. That appears to be this case."

The employment of the word "intentionally" in respect to the commission of the crime charged, makes the second statement of Judge Nelson bear a very different signification from his first definition, based upon the opinion of the Supreme Court. If it be necessary to show that the person charged intentionally committed a crime in the demanding State, grave questions might arise as to the surrender of persons for offences in which proof of intent is not essential, including the large class of negligent crimes; and in any case substantial proof of guilt would be necessary. We are, therefore, inclined to believe that the observation of the learned judge was not intended to be understood in that sense, and it had no effect upon the case before him, since the writ of *habeas corpus* was dismissed and the prisoner remanded. It is stated in the report of the case that from this decision an appeal was taken to the circuit court. The writer is informed by the clerk of the circuit court, Mr. Hillis, that the decision of that court, which was oral, affirmed the decision of Judge Nelson.

§ 566. **Proof of seeking Asylum inadmissible.**—It is no answer to the demand for the rendition of a person as a fugitive from justice that he was induced by fraud to come into the State from which his recovery is sought. Such was the decision of Governor Hill of New York in 1886, in the case of one Daniel Brown charged with perjury in Pennsylvania. It

appeared that Brown fled from Pennsylvania and went to Canada, from whence he was induced by stratagem and false representations to come into the State of New York, where he was arrested. Governor Hill ordered his surrender; and his decision was subsequently sustained on *habeas corpus*,<sup>1</sup> the court adopting as its definition of a fugitive from justice the language above quoted from the decision of the Supreme Court of the United States in *Roberts v. Reilly*.<sup>2</sup> In this relation it is to be observed that the provision of the Constitution is that a person charged in any State, &c., "who shall flee from justice, and be found in another State," shall be delivered up.

§ 567. **Person may be a Fugitive, though he returns to his Home.** — On the principle that the motive of the prisoner in leaving the State in which he is charged to have committed the crime is not a proper subject of inquiry, it is held that a person may be a fugitive from justice though, after committing the crime charged, he returns to his home. In the case of one Hall, whose rendition was demanded by the governor of New York, in 1845, Attorney-General Kane advised the governor of Pennsylvania that the idea of fleeing from justice was not satisfied by departure from a place of temporary sojourn for one's ordinary and permanent residence, although a statute may have been violated in the former place.<sup>3</sup> This precedent was referred to and disapproved by the supreme court of Massachusetts in *Kingsbury's case*,<sup>4</sup> in which it was contended

<sup>1</sup> *Ex parte Brown*, 28 Fed. Rep. 653.

<sup>2</sup> *Supra*, § 566.

<sup>3</sup> 6 Pa. L. J. 418.

<sup>4</sup> 106 Mass. 223. It is stated in the brief of Mr. J. H. Benton, Jr., in the *Vinal case* (*infra*, § 570), that when the governor of Massachusetts issued his warrant of rendition in this case there was evidence before him that the accused left Maine to avoid prosecution. Mr. Benton says:—

"*Kingsbury's case*, 106 Mass. 223, is cited against the position that there must be actual, conscious flight in order to make the person a fugitive within the meaning of the Constitution. But the facts in that case as shown by the papers on file in the office of the Secretary of State, and which, as the opinion shows, were before the supreme court when it decided the cause upon *habeas corpus*, and are printed in the court papers, were, that the alleged fugitive, who lived in Boston, went to Maine, and secretly took four one thousand dollar United States bonds from the safe of her brother, on the 11th of October, and on the 13th left

that as the prisoner's home was in Boston, to which place she returned after the commission of the acts in question in Maine, she was not a fugitive either under the act of Congress or the Massachusetts statute. The court said:—

“ We are referred to the opinion of the attorney-general of Pennsylvania, stated in *Hurd on Habeas Corpus*, 606, as an authority for this position. But we do not think it is sustained by a reasonable construction of either of the statutes above referred to. The material facts are, that the prisoner is charged with a crime in the manner prescribed, and has gone beyond the jurisdiction of the State, so that there has been no reasonable opportunity to prosecute him after the facts were known. The fact in this case, that she returned to her permanent home, cannot be material.”

It has lately been held in several cases that the fact that the person accused returned to his home is no answer to the charge that he is a fugitive from justice.<sup>1</sup>

§ 568. **Case of Gaffigan and Merrick.**—In December, 1878, an interesting decision was made by Governor Cullom, of Illinois, in the case of two persons named Gaffigan and Mer-

Maine and came to Boston. It was also shown clearly that, before she left Maine, she told one of the affiants that she had taken the bonds, and upon being asked if she was not afraid that she should be arrested, said that she was not, but that she should ‘not let any grass grow under her feet’ before she got out of the State and invested the bonds, and that she should return to see her friends in Maine *as soon as she dared to*. In that case the crime was charged by a complaint to a magistrate in Maine, who issued a warrant thereon, and was shown by several clear and explicit affidavits accompanying the requisition, and before the court. The flight was also proved in the most explicit manner by the affidavits of several witnesses, and the guilty knowledge or intention to flee to avoid prosecution was conclusively shown by the affidavit of the person to whom Mrs. Kingsbury said she should ‘not let grass grow under her feet’ before she got away and invested the bonds, and that she should return to Maine ‘as soon as she dared to.’ There was absolute proof in that of the ‘guilty knowledge’ which, as was said in the *Wyeth* case, ‘is the test of fugitiveness.’”

It must be admitted that the language of the court, and the elements of “fugitiveness” therein defined, are less exacting and restrictive than was necessary upon the facts as disclosed by Mr. Benton. It would seem, therefore, that the court intended to lay down a more liberal rule than that which might have sustained the action of the governor upon the facts.

<sup>1</sup> *Ex parte Swearingen*, 13 S. C. 74; *In re Roberts*, 24 Fed. Rep. 132; *In re Keller*, 36 Id. 681, 686.

rick, whose surrender was demanded by the governor of Pennsylvania on a charge of murder committed in that State in January, 1865. Accompanying the requisition was an indictment found against them in Pennsylvania in March, 1865, for the crime for which their rendition was demanded. It was alleged in their behalf that soon after the murder was committed and before the indictment was found, they left their place of residence in Pennsylvania and went to Illinois, where they had continuously resided in an open manner, bearing their own names, transacting daily business, and holding responsible public positions. In 1870 or 1871 Gaffigan was joined by his father, who left their former place of residence in Pennsylvania with the avowed purpose of joining his son in Illinois. The residence of the latter in Illinois was also known to other persons in the particular locality in Pennsylvania, among whom was a constable, and a witness whose name was indorsed on the indictment. On the other hand, the prosecuting attorney in Pennsylvania denied that there had been any laches in the matter, and declared that he had acted upon the first knowledge he had acquired in respect to the whereabouts of the persons charged. Governor Cullom held that while it might be inferred from the fact that the accused left the State of Pennsylvania shortly after the date of the alleged murder, that they were fugitives from justice, yet this character did not always adhere to them; and that their long residence in Illinois, which was so entirely unconcealed and well known, that the officers of justice in Pennsylvania could have been ignorant of it only because they made no effort to find it out, had purged them of the character of fugitives from justice. It may be argued that this decision rests upon moral rather than upon strictly legal grounds. It is generally held that there is no limitation as to time in the recovery of fugitives from justice other than such as may be established by the statutes of limitation of the governments concerned, and it does not appear to have been suggested in the case under consideration that any such limitation had been established either by the laws of Pennsylvania or of Illinois. The decision of Governor Cullom may also be thought to involve the theory that the authorities

of the demanding State may be called upon to show that they have used due diligence in pursuing the fugitives and in seeking their surrender.<sup>1</sup>

§ 569. **Case of Senator Patterson.** — In 1877 the governor of South Carolina demanded the surrender from the District of Columbia of John J. Patterson, a United States Senator from that State. The case came before Judge Humphreys of the supreme court of the District of Columbia on a writ of *habeas corpus*, at chambers. Judge Humphreys held that the relator was not a fugitive from the justice of South Carolina, being sent by the people of that State to Washington as their Senator, and being there in the discharge of that function. Evidence was also received to show that Patterson had several times been in South Carolina since the time of the alleged offence, and that no attempt had been made to arrest him.<sup>2</sup>

§ 570. **Vinal Case ; Statement of Facts.** — The most elaborately argued case in recent years, and one of the most fully and ably argued of all cases, upon the question as to what constitutes a fugitive from justice in interstate rendition, is that of William L. Vinal, whose surrender, upon the demand of the governor of New York, was refused by the governor of Massachusetts on June 16, 1890. In considering the decision reached, as well as the arguments made in behalf of the person charged, it is to be recollected, as is elsewhere shown, that the law and practice in Massachusetts touching the exercise of executive discretion and the requirement by the executive of proof that the person charged has fled to evade prosecution, are exceptional. But, although counsel for the accused naturally insisted that their client's case should be determined upon that law and practice, the arguments both for and against him, as well as the opinion rendered in the case by the attorney-general's office, covered a far wider range ; and a review of them will disclose more effec-

<sup>1</sup> The Nation (vol. xxviii. p. 26, Jan. 9, 1879) observes upon the above case : "It is obvious that this is practically the exercise of a pardoning power by the governor of one State for offences committed in another." It is suggested as a remedy, in the same criticism, that the duty of surrender be transferred to the United States courts.

<sup>2</sup> Washington Post, Dec. 7, 1877. Also cited in Leary's case, 6 Abb. N. C. 67.

On April 22, 1890, Vinal was, jointly with two other persons, indicted in the county of New York, in the State of New York, for a violation of section 435 of the penal code of that State. A copy of the indictment is given below.<sup>1</sup> On the

**OF THE CITY AND COUNTY OF NEW YORK.**

The said Thomas W. Lawson, William L. Vinal, and Laselle J. Hayden, all late of the City of New York, in the County of New York, aforesaid, on the fifth day of March, in the year of our Lord one thousand eight hundred and ninety, at the city and county aforesaid, with intent to affect the market price of the stock, bonds and other evidences of debt of the Lamson Consolidated Store Service Company, a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey, feloniously did knowingly circulate, and cause and procure to be circulated, divers false statements, rumors and intelligence of and concerning the said corporation and of its directors and officers, and of its management and affairs ; and, amongst others, certain false statements, rumors and intelligence in substance and to the effect following, that is to say, that by reason of the unbusinesslike management of the affairs of the said corporation, by its directors and officers, the capital stock of the said corporation had been greatly and injuriously depreciated in value ; that the said corporation through its officers and directors had resorted to divers improper, oppressive and subtle means, devices and practices in order to destroy competition by other corporations and persons ; that there then existed among the officers and directors of the said corporation a movement to defraud and deprive the stockholders of the said corporation of the legitimate advantage to which they were properly entitled by reason of their ownership or stock therein ; that the said Laselle J. Hayden, being a stockholder of the said corporation, in the behalf of a large number of other stockholders therein, who were apprehensive of serious injury by reason of the improper and injurious acts of the officers and directors of the said corporation, had retained attorneys for the purpose of applying for an injunction in the State of New Jersey to restrain the said corporation from issuing mortgage bonds of the said corporation to the extent of one



24th of April, upon due and formal application by the district attorney of the county of New York, accompanied with the papers and documents (including an affidavit as to flight) required by the New York rules in such cases, the governor of New York made a requisition for Vinal's surrender on the governor of Massachusetts, in which State Vinal was known to be. Accompanying the requisition were the original application of the district attorney, a certified copy of the indictment, an original bench warrant for Vinal's arrest, and a return thereto to the effect that he could not with due dili-

million and two hundred thousand dollars, and also for the purpose of obtaining the appointment of a receiver to take charge of the said corporation until the annual meeting of the stockholders of the said corporation, to be held in the month of April, next thereafter ensuing ; that the directors of the said corporation then proposed to issue said bonds as a device thereby to acquire pecuniary profit for themselves at the expense of, and to the great injury of, the other stockholders of the said corporation ; that the affairs of the said corporation were then in a very critical condition ; that its officers and directors were wholly inefficient and dishonest, and that its stock was then of very little, if of any value. Whereas, in truth and in fact, the capital stock of the said corporation had not been, by reason of the unbusinesslike management of its affairs by its officers and directors, greatly or injuriously depreciated in value ; and the said corporation had not through its officers and directors resorted to improper, oppressive or subtle means, devices or practices in order to destroy competition by other corporations or persons ; and there did not then exist among the officers and directors of the said corporation a movement to defraud and deprive the stockholders of the said corporation of the legitimate advantage to which they were properly entitled by reason of their ownership of stock therein ; and whereas in truth and in fact the said Laselle J. Hayden had not in behalf of a large number of other stockholders therein retained attorneys for the purpose of applying for an injunction in the State of New Jersey to restrain the said corporation from issuing said mortgage bonds of the said corporation, or for the purpose of obtaining the appointment of a receiver to take charge of its affairs until the said annual meeting ; and whereas in truth and in fact the directors of the said corporation did not then propose to issue the said bonds as a device thereby to acquire pecuniary profit for themselves at the expense of, and to the great injury of the other stockholders of the said corporation ; and the affairs of the said corporation were not then in a very critical condition ; and its officers and directors were not wholly inefficient and dishonest, but were honest and efficient, and its stock was not then of very little, if of any value ; all of which they, the said Thomas W. Lawson, William L. Vinal and Laselle J. Hayden, then and there well knew ; against the form of the statute in such case made and provided, and against the peace of the people of the State of New York, and their dignity.

JOHN R. FELLOWS,  
*District Attorney.*



gence be found in the State of New York. Upon the reception of this requisition, a hearing was granted by the governor of Massachusetts under the provisions of the Public Statutes of 1882, chapter 218, for the purpose of determining whether the demand was conformable to law and ought to be complied with. The hearing was originally set for the 26th of April, but on that day it was adjourned until the 5th of May, the fugitive's counsel stating that he proposed to prove that the criminal prosecution in New York and the application for rendition were made for private purposes, and not to enforce the criminal laws of the State of New York, and that for that reason the demand ought not to be complied with. On the day to which the hearing was adjourned certain affidavits were introduced in behalf of the accused, and another adjournment was granted to the 9th of May to afford the State of New York an opportunity to submit counter affidavits. Some of the affidavits produced on the part of Vinal alleged that the proceedings against him in New York were promoted for fraudulent purposes by interested parties. As against this allegation there was an affidavit of the district attorney of the county of New York to the effect that prior to the 1st day of April there were brought to his attention, by reputable and responsible persons, certain facts and matters tending to show that a conspiracy, cognizable in the criminal courts of that county, had been entered into by certain individuals, among whom was William L. Vinal, to injure the business and commercial reputation and standing of the Lamson Consolidated Store Service Company, a corporation under the laws of New Jersey, and transacting business in the county of New York, and to depreciate the market value of its stock, by divers unlawful, indirect and subtle means, and for improper and wicked purposes; that affiant had then caused the matter to be carefully and thoroughly examined and inquired into, and the evidence to be fully prepared; that subsequently, on or about the 14th day of April, he became convinced that the charge was well founded, and on that day caused subpoenas to be issued to require witnesses to attend and give evidence before the grand jury, which they did on the following day; that on

the 17th day of April further evidence was submitted, and that on the 22d of April the grand jury found an indictment jointly charging William L. Vinal, Thomas W. Lawson, and Laselle J. Hayden, with circulating false rumors with the felonious intent above stated. The affidavit contained various other allegations, all tending to show the honest character, so far as the authorities of New York were concerned, of the prosecution there instituted and of the application for rendition.

But, in the end, the question of good faith ceased to play an apparent part in the case. The question chiefly debated and upon which the decision of the governor of Massachusetts finally turned, was as to whether the accused was a fugitive from justice.

§ 571. **Vinal Case; Specific Evidence as to Flight.** — Accompanying the application to the governor of New York, and his requisition upon the governor of Massachusetts, there was an affidavit as to flight, made by Daniel W. Howland, which was as follows: —

“That the said William L. Vinal was actually in the city and county of New York at the time of the commission of said crime, and was seen in this city on March 1, 1890, by deponent, and remained in this city until the fifth day of March, as deponent is informed by the clerk of the Everett House, in said city of New York, and verily believes. That thereafter and on or about the 5th of March, 1890, for the purpose of avoiding prosecution for the same offence so committed by him, he fled from the jurisdiction of this State, and is now in Boston, Mass., a fugitive from justice, as deponent is informed and verily believes.”

On the part of Vinal, several affidavits on the subject of flight were introduced. The principal one, that of Vinal himself, was as follows: —

“I am thirty-five years old; my home is in Lexington, Mass., where I live with my mother-in-law and child. I was born in New Bedford, Mass.

“For about three years, I was employed constantly by the Rand Avery Company, and was its salesman and solicitor for business until the fall of the year 1888. After the Rand Avery Company

ceased to do business, which was about November, 1888, I had charge of the sales department, and was secretary of the Lawson Manufacturing Company until about the first of November, 1889, since which time I have been engaged in my own business, having my office at 209 Washington Street, Rogers Building, in Boston. That business has required my frequent presence in New York City, and I have been there frequently since November, 1889. And since the date of the alleged offence, which is referred to in the requisition papers in this matter, I have been in New York at various times, namely, on the 5th of March, 1890, at which time I stopped at the Everett House, and on which day I left New York for the purpose of coming to Boston to get my mother-in-law, Mrs. Marianna Caldwell, and my daughter, Marianna, to take them back to New York with me, which I did, and arrived in New York on the 7th of March, and went with them to the Ashland House, at the corner of Fourth Avenue and Twenty-Fourth Street, and remained there with them until the 12th of March, when I returned with them to Boston to attend to my business here. I was in New York again on the fifth day of April, and stayed at the Everett House, on Union Square. I was in New York again on the seventh day of April, and remained there constantly until the 9th day of April, stopping at the Everett House. I was in New York City again on April 12, and stopped at the Everett House. The last time that I left New York City, which I think was April 12, 1890, I did so because I had finished my business there, and for the purpose of returning to my home and business here. I did not then know, nor was I in any way informed until the proceedings upon this application, that there was any such offence in the State of New York as I am alleged to have committed in the indictment annexed to this requisition. I did not do the acts which I am alleged to have done. I did not know, however, that it was an offence to do them until I ascertained it in the course of the proceedings upon this requisition. I returned from New York as I went to New York, in the course of my business, and in the conduct of my own affairs, and not to escape from any prosecution, for I had done nothing which I knew was wrong, and I had no consciousness of ever having committed anything for which I could be prosecuted under the laws of New York."

Vinal's allegations as to his visits to the Ashland House and the Everett House were corroborated by the affidavits of

the clerks of those hotels, and also by an affidavit of Mrs. Caldwell.

§ 572. **Vinal Case; Argument for the State of New York.** — There were two briefs on the part of the State of New York, which were signed by John R. Fellows, district attorney of the county of New York, and John D. Lindsay, assistant district attorney of the same county. On the part of the accused arguments were made by J. H. Benton, Jr., and Mr. Swasey, the attention of the latter, it is believed, being chiefly devoted to other questions than that of the flight from justice. The writer is indebted to Mr. Lindsay for copies of the briefs presented on the part of the State of New York, in type-written form; and to Mr. Benton for a copy of his printed brief entitled, "What is it to 'Flee from Justice.'"<sup>1</sup> It is only just to say that the arguments on both sides were conducted with exceptional learning and ability.

In the first brief on the part of the State of New York, it was contended: (1) That the offence charged against Vinal, being a violation of the penal code of New York, formed a proper basis for a demand;<sup>2</sup> (2) that the question to be determined was whether the accused was duly charged with an offence, and not whether he was guilty;<sup>3</sup> (3) that the certification of the demanding governor as to the authenticity of the copy of the indictment is conclusive on that subject;<sup>4</sup>

<sup>1</sup> The writer is also indebted to Mr. Benton for the privilege of seeing a stenographic report of his very cogent argument on the subject of the discretion of the governor under the Massachusetts statutes.

<sup>2</sup> Citing 13 Am. L. Rev. 192; Hurd's Habeas Corpus, 2d ed., 601, 602; Kentucky v. Denison, 24 How. 86; 24 Law Mag. 226; Spear on the Law of Extradition, 2d ed., 351; Matter of Hayward, 1 Am. L. J. N. S. 271; People, *ex rel.* Lawrence, v. Brady, 56 N. Y. 182; Matter of Leary, 10 Ben. 197; Com. v. Green, 17 Mass. 515, 547; Matter of Fetter, 3 Zab. 311; Matter of Voorhees, 3 Vroom, 141; Morton v. Skinner, 48 Ind. 123; Matter of Hughes, Phill. (N. C.) L. 57; *In re* Greenough, 31 Vt. 279; Opinion of judges of supreme court of Maine, 24 Am. Jur. 226; *Ex parte* Reggel, 114 U. S. 642; *In re* Keller, 36 Fed. Rep. 681; Brown's case, 112 Mass. 409.

<sup>3</sup> Citing Judge Cooley, Princeton Review, January, 1879, p. 165; Matter of Clark, 9 Wend. 212; Opinion of Gov. Fairfield, 24 Am. Jur. 226; 2 Seward's Works, 528.

<sup>4</sup> Citing Matter of Manchester, 5 Cal. 237; Kingsbury's case, 106 Mass. 223; Kentucky v. Denison, 24 How. 66.

(4) that the legal sufficiency of the indictment is a question for the tribunals of the State in which it was found ;<sup>1</sup> (5) that, where an indictment is presented, it is unnecessary to furnish evidence that the act charged is an offence against the laws of the demanding State ;<sup>2</sup> (6) that recent decisions broadly assert that the recitals in the warrant of the governor of the demanding State are conclusive that the accused stands charged with crime in that State ;<sup>3</sup> (7) that a duly formulated demand, charging the person sought for with an offence, and with being a fugitive from justice, is a sufficient foundation for the issuance of a warrant of arrest by the governor on whom the demand is made ;<sup>4</sup> (8) that, in order to be a fugitive from justice, one need not have left the State for the purpose of avoiding prosecution, so long as he has in fact left the State ;<sup>5</sup> (9) that it is immaterial that the fugitive is a resident of the State in which he is found ;<sup>6</sup> (10) that evidence of flight may be supplied by affidavit ;<sup>7</sup> (11) that it is no cause for discharge that the proofs of flight are meagre, if a *prima facie* case is made out ;<sup>8</sup> (12) that an affidavit on information and belief is sufficient as to flight ;<sup>9</sup> (13) that, a proper case being presented under the law, the governor is

<sup>1</sup> Citing *Matter of Voorhees*, 3 Vroom, 141 ; *Davis's case*, 122 Mass. 324 ; *State v. Schlemm*, 4 Harr. (Del.) 577 ; *People, ex rel. Lawrence, v. Brady*, 56 N. Y. 182 ; *Matter of Briscoe*, 51 How. Pr. 422 ; *Ex parte Roberts*, 24 Fed. Rep. 132 ; *People v. Byrnes*, 33 Hun, 98 ; *Ex parte Reggel*, 114 U. S. 642 ; *State v. O'Connor*, 38 Minn. 243 ; *Kentucky v. Denison*, 24 How. 104.

<sup>2</sup> Citing *Roberts v. Reilly*, 116 U. S. 80 ; *In re Clark*, 9 Wend. 212 ; *Kingsbury's case*, 106 Mass. 223 ; *In re Greenough*, 31 Vt. 279 ; *Opinion of judges of Maine*, 24 Am. Jur. 222-223 ; *Kentucky v. Denison*, 24 How. 66 ; *Davis's case*, 122 Mass. 324.

<sup>3</sup> Citing *Ex parte Swearingen*, 13 S. C. 74 ; *Leary's case*, 6 Abb. N. C. 43 ; *People v. Pinkerton*, 17 Hun, 199 ; *Hibler v. State*, 43 Tex. 197 ; *Johnston v. Riley*, 13 Ga. 97.

<sup>4</sup> Citing *Ex parte Lewis*, 21 Cal. 523 ; 7 N. Y. Crim. Rep. 411 *et seq.*

<sup>5</sup> Citing *State v. Richter*, 37 Minn. 436 ; *Roberts v. Reilly*, 116 U. S. 80 ; *Ex parte Brown*, 36 Fed. Rep. 653.

<sup>6</sup> Citing 36 Fed. Rep. 681 ; *Kingsbury's case*, 106 Mass. 223 ; *In re Adams*, 7 L. R. 386.

<sup>7</sup> Citing *Hurd's Habeas Corpus*, 2d ed. 612 ; *Spear on the Law of Extradition*.

<sup>8</sup> Citing *Ex parte Reggel*, 114 U. S. 642.

<sup>9</sup> Citing *In re Keller*, 36 Fed. Rep. 681 ; *State v. Richter*, 37 Minn. 436 ; *Roberts v. Reilly*, 116 U. S. 80.

bound to comply with the demand, and that the application cannot be impeached for alleged collateral motives;<sup>1</sup> (14) that, apart from the cases in which the question of fraud is involved, the only cases where a demand may be denied are, (a) where the fugitive is under civil or criminal process in the State in which he is found, and (b) where the fugitive's identity is not shown;<sup>2</sup> (15) that where the indictment substantially charges a crime on its face, neither the courts, nor the executive on which the demand is made, can go behind it and inquire into the circumstances.<sup>3</sup>

§ 573. **Vinal Case; Argument for the Accused.** — In the brief of Mr. Benton, after some general observations on the importance of the constitutional provision as affecting personal liberty,<sup>4</sup> the question is raised whether the indictment charged an offence under the penal code of New York. It alleged that the Lamson Consolidated Store Service Company was a corporation under the laws of the State of New Jersey, but did not allege that the stock was ever dealt in in New York or had a market price there. The stock was never listed at the New York Stock Exchange. Was it, said Mr. Benton, an offence under the penal code of New York to circulate

<sup>1</sup> Citing Wharton's Cr. Pl. & Pr. § 34, and cases there cited; I. T. Hoague, Am. L. Rev., January, 1879; Opinion of Gov. Fairfield, 24 Am. Jur. 226; Spear on the Law of Extradition, second edition, in which he repudiates the views expressed in the first edition as to executive discretion; 13 Am. L. R. 241 *et seq.*; 6 Pa. L. J. 212; State v. Schlemm, 4 Harrington (Del.), 577; State v. Buzine, Id. 572; Dow's Case, 18 Pa. St. 37, 39; Cooley's Constit. Lim.; Walker's Am. Law, sec. 64, note (c), 7th ed.; Hurd on Freedom and Bondage, vol. ii.; *In re Troutman*, 4 Zab. 634.

<sup>2</sup> Citing Leary's case, 10 Ben. 197-198; s. c. Abb. N. C. 441; Kingsbury's case, 105 Mass. 223; Davis's case, 122 Id. 324; *In re Clark*, 9 Wend. 212; People v. Pinkerton, 77 N. Y. 245; s. c. 17 Hun, 199; Com. v. Daniel, 6 Pa. L. J. 418; State v. Buzine, 4 Harr. (Del.) 572; State v. Schlemm, Id. 577; Norris v. State, 24 Ohio St. 217; Work v. Carrington, 34 Id. 64, 319.

<sup>3</sup> Kingsbury's case, 106 Mass. 223; Brown's case, 112 Mass. 409; Johnston v. Riley, 13 Ga. 97; Taylor v. Taintor, 16 Wall. 336; *In re Clark*, 9 Wend. 212; *In re Voorhees*, 3 Vroom, 141; *In re Greenough*, 31 Vt. 279; Kentucky v. Denison, 24 How. 66.

<sup>4</sup> Citing *Ex parte Joseph Smith*, 3 McLean, 136, 137; opinion of Governor Cullom, case of Gaffigan and Merrick, 1878; report of the Special Committee of the Governor's Council on the subject of issuing requisitions on other States, made Feb. 25, 1841, vol. liv. p. 81, Council Records.

false rumors with intent to affect the market price of the stock, bonds, or evidences of debt of a corporation of another State, which were not dealt in in New York and had no market price in that State? This point was discussed at length by Mr. Swasey.

Passing to the consideration of the question of fleeing from justice, Mr. Benton contended: (1) That flight is a question of fact;<sup>1</sup> (2) that "*the burden of proving flight is necessarily upon him who asserts it, precisely as the burden of proving any other fact is upon him who alleges it;*" (3) that flight is not to be inferred, but proved and established beyond a reasonable doubt;<sup>2</sup> (4) that to flee means knowingly to go away from something which one fears, and that this necessarily implies consciousness of guilt;<sup>3</sup> (5) that, if a person does something

<sup>1</sup> Citing Spear on the Law of Extradition, p. 387; opinion of Gov. Cullom, case of Gaffigan and Merrick; opinion of Attorney-General Clifford, of Massachusetts, in case of Jonas Wyeth, July 30, 1856; Roberts v. Reilly, 116 U. S. 80; *In re Jackson*, 2 Flippin, 183; opinion of Edmund Randolph, Am. St. Papers (Fol.), vol. xx. p. 39. Mr. Benton shows that there are eighty-four requisitions with which the governor of Massachusetts has not complied. In many cases no papers are on file to show the ground of refusal, but Mr. Benton states that in a large number of instances it appears that the requisition was not complied with "for lack of evidence of actual flight."

<sup>2</sup> As to the character of evidence, Mr. Benton cites *In re Jackson*, 2 Flippin, 183.

<sup>3</sup> Citing Rapalje & Lawrence's Law Dict., tit. "Fugitive from Justice;" Burrill's Law Dict., same tit.; Bouvier's Law Dict., same tit. These all say that a fugitive from justice is he who leaves to "escape punishment." Mr. Benton also quotes from Spear's Law of Extradition, 2d ed., p. 380, that, to be a fugitive from justice, a person must "take himself out of the jurisdiction in which he has committed a crime *in order* to escape its justice for the crime which he is *conscious* of having committed."

"The argument is this: He *knows* if he were to remain he would be liable to arrest and trial, and if he were convicted, to punishment for his crime, and *in order to escape this liability*, he flees, goes away, and removes himself to a place where, as he supposes, the same liability will not exist. He hopes in this way to detach himself from the legal consequences of a criminal offence."

Mr. Benton quotes again from the same book, p. 290, as follows: "He [the fugitive] actually goes out of the State to escape from its justice. He goes there [into the other State] and remains there, at least for the time being, in order to evade the pursuit of justice." As to what constitutes a fugitive from justice, Mr. Benton also cited Foxley's case, 5 Coke, 109; *United States v. White*, 5 Cranch, 38, 79; *United States v. Smith*, Brunner's Collection, 87; *United States v. Brown*, 2 Lowell, 267; *United States v. O'Brian*, 3 Dillon, 381; *State v.*



*malum in se*, that is, robs, murders, or does something known to all persons as a crime, it is *prima facie* to be presumed when he leaves the place where he did it that his intention is to escape prosecution for it. Mr. Benton said : —

“ But it cannot be said that a person, who has done something which is not thus known as a crime, something which is not criminal in itself, something which no one would know to be a crime who did not read and correctly construe the code, something which is a purely statutory offence, is to be assumed to *know* that he has committed a crime, and therefore to be held to be fleeing from prosecution for that crime, when, *in the ordinary course of his business or his affairs*, he leaves the place where he has done the act, with *no fear of a charge of crime or prosecution for crime.*”<sup>1</sup>

Mr. Benton also contended (6) that it has always been held in Massachusetts that the constitutional provision requires actual flight caused by apprehension of danger, to justify rendition. Mr. Benton states that the papers in the office of the secretary of state show that proof of actual flight has always been required in Massachusetts, and that the portion of chapter 81 of the acts of 1859, requiring the requisition to be accompanied “ by sworn evidence that the party charged is a fugitive from justice,” now found in section 1, chapter 218, Public Statutes, is merely declaratory of the law as held in that State. In support of this statement he cites various

Washburne, 48 Mo. 240 ; case of Senator Patterson ; opinion of attorney-general of Pennsylvania, 6 Pa. L. J. 418 ; opinion of Gov. Fairfield, 24 Am. Jur. 326 ; opinion of Attorney-General Train of Mass., case of Kimpton, 12 Am. Law Rev. 181.

<sup>1</sup> As illustrations of cases in which knowledge of the law and flight from justice are not to be presumed, Mr. Benton supposes the case of a citizen of New York who goes to his home in that State after attending a play at an unlicensed theatre in Boston on Saturday evening ; or of a man who, being on a vacation in Massachusetts, attempted to catch fish on Sunday ; or who, passing through the State on a railway train or a steamboat, bet at cards ; or who played at cards at a cattle show, military muster, or public gathering, or within twelve hours of the time of holding the same, within one mile of the place where it was held ; the going to a play at an unlicensed theatre on Saturday evening, the betting at cards, the attempting to catch fish on Sunday, and the playing at cards under the circumstances stated, all being penal offences under the laws of Massachusetts.



opinions of attorneys-general of Massachusetts, and of attorneys of the Commonwealth in Suffolk county, on file in the office of the secretary of state, to the effect that fleeing from justice means conscious flight. The leading case which he cites on this point is that of Jonas Wyeth, in 1856, charged with bigamy in Iowa. Wyeth claimed that he believed his second marriage would be legal because he understood that a divorce obtained from his first wife in Iowa was valid. He was indicted for bigamy in Iowa on the ground that the divorce was invalid, and it appears practically to have been conceded to have been so. Wyeth swore that he had left the State of Iowa believing that he had committed no crime, and with no intent to flee from justice; that he was at the time an inhabitant of Massachusetts, was in Iowa not more than one day and two nights, and believed that he had broken no law; that he did not flee from justice nor flee at all, and did not suspect that he was charged or threatened with anything, and was not and never had been a fugitive from justice. Counsel for Iowa conceded that the demand for surrender implied that the party leaving the State knew that he had committed a crime, "and this guilty knowledge," said counsel, "is the test of fugitiveness;" and he argued upon the facts that Wyeth left Iowa, knowing that he had committed the crime of bigamy. Attorney-General Clifford, in an opinion dated July 30, 1856, advised that it was not satisfactorily shown that Wyeth had fled from justice, and the governor refused to give him up. Rufus Choate, who appeared for Wyeth, stated the question as follows:—

"Doubtless all are held to know the law *to this extent* exactly, that, as a principle of policy, they shall not allege ignorance of it as a defence against charge of crime. But all are not held to know the law *as a matter of fact*, and to have in all cases consciously acted under that knowledge. When, therefore, the inquiry is, as to the *actual animus*, as to the existence of fear, the consciousness of guilt, the felt agony of remorse, and the like, it is inadmissible altogether to assume, as a conclusive legal presumption, a knowledge of law which, in fact, the party does not possess, and deduce from that extravagant fiction a state of mind which did not exist.

“ He who breaks the law, knowing it or not, is in *danger*. But if he believes that he does not break it, he does not *feel fear*, and without fear, from what is believed a danger, there is no ‘*flight*.’ ”

Mr. Benton also took the position (7) that in regulating the delivery of fugitives as between the States, the framers of the Constitution, instead of requiring evidence of criminality, as is the rule in international cases, exacted proof of flight. Mr. Benton said : —

“ They first provided that it should be simply necessary to *charge* the person demanded with crime, and left it to be held, as it was held afterwards, that that might mean crime under the law of the State making the demand. But they then provided that the person should not only be found in the State where the demand was made, but *should also have fled* from justice. In other words, in the place of *proof* of crime, they put the *fact* of flight as indicative of crime.”

This ground appears to have been assumed by Mr. Choate in the Wyeth case, for Mr. Benton quotes him as saying that the framers of the Constitution, in seeking to establish as between the States a rule better suited to their intimate Federal relations than that prevalent in international cases, “ disposed of the matter by an Americanism,” and required proof of flight. In support of this view Mr. Benton also quotes an opinion of Attorney-General Clifford of Massachusetts, given to the governor March 29, 1851, in the case of one Ebenezer Bartlett, an alleged fugitive from the justice of Maine, in which the attorney-general said : —

“ The fact that he (the person charged) has ‘*fled* from justice’ was evidence required by the framers of the Constitution as furnishing to some extent the *prima facie*, or presumptive evidence that he had committed an offence against the laws of the State from which he was a fugitive. That he has *fled* is in itself the *indication of consciousness* of guilt, and of his being exposed, if he continues within the jurisdiction, to prosecution and punishment. This, then, is a vital fact to be proved to the satisfaction of the executive upon whom the demand for his arrest and delivery is made. It is his only justification for exercising the high prerogative of sending a

citizen under duress into a foreign jurisdiction upon the mere *charge* of his having committed a crime."

§ 574. **Vinal Case ; Supplemental Brief for New York and Reply for Accused.** — In reply to the case presented on the part of Vinal, Messrs. Fellows and Lindsay filed a supplemental brief, in which, after emphasizing the point that it is sufficient to constitute an offender a fugitive from justice that, after committing the act charged, he has gone beyond the jurisdiction of the demanding State so as to afford no *reasonable opportunity* to prosecute him,<sup>1</sup> they took the ground, (1) that the presumption of innocence did not apply to a rendition proceeding ; and (2) that the accused must be presumed to know the law he is charged to have violated. It was also observed that the acts charged were of an aggravated nature, and not like the cases cited by Vinal's counsel, where guilt existed irrespectively of criminal intent. "In order," said Messrs. Fellows and Lindsay, "to have rendered himself liable to criminal prosecution on the charge now pending against him, it was necessary for him to have directly or indirectly spread *false rumors, &c.*, with *intent* to affect the market price of stock, with *full knowledge of the falsity of the rumors.*"

Replying to this supplemental brief, Mr. Benton insisted upon the discretion<sup>2</sup> of the governor and the necessity of proof of actual flight, and repelled the argument that an assumption of guilt could be made the basis of an inference of flight.

§ 575. **Vinal Case ; Report of Attorney-General's Department.** — After the hearing was concluded, the governor referred the requisition, the evidence and the arguments of counsel, to the attorney-general for an opinion. On the 16th of June, 1890, Mr. Henry A. Wyman, second assistant attorney-general, sub-

<sup>1</sup> See Kingsbury's case, decision of supreme court of Massachusetts, *supra*, § 568.

<sup>2</sup> On the subject of discretion Mr. Benton cited the case of Kimpton, which is discussed hereafter in the chapter on surrender, and the refusal of Governor Butler, in 1883, to deliver up one Pickert, charged with crime in Missouri, because evidence was produced which, although not wholly satisfactory to his mind that Pickert was wanted as a witness, yet "raised such strong doubts to the contrary that in his judgment it was not safe to issue a warrant of extradition."

mitted to the governor, by direction of the attorney-general, a report upon the case.<sup>1</sup> The report says : —

“ The requisition appears to be conformable to law. It consists of the request of his Excellency, the governor of the State of New York, a duly certified copy of the indictment, a bench warrant, the certificate of the district attorney of the county in which the indictment was found, and an affidavit that the demanded person is a fugitive from justice. This is ordinarily sufficient, and unless attacked and controlled, should cause your Excellency to honor the requisition. But the demanded person, by counsel, objects to the granting of the requisition, and for the following reasons : *First*, that the indictment does not charge a crime ; *second*, that it was improperly procured, and that your Excellency should exercise your discretionary power and decline to honor the requisition ; *third*, that the person named is not a fugitive from justice.”

On the first point, the report advised that, while the executive upon whom the demand was made might “ see to it that the indictment contains the essential elements of the crime charged,” he was “ not to inquire as to the demanded person’s guilt or innocence,” nor “ into any possible technical defect ” in the indictment. The report of Mr. Wyman then continues as follows : —

“ Upon examination of the indictment in this case, and the section of the code upon which it is based, and the laws pertaining thereto, together with the arguments of counsel, I am of the opinion that, for the purposes of extradition, no substantial insufficiency in the indictment is shown. It is claimed, —

“ First, that the indictment does not charge a crime, because the section of the code upon which it was founded was not intended to apply to foreign corporations. It is contended that legislation, being intended to be confined to its own territory for the protection of its own citizens and corporate bodies, does not afford protection to a corporation of another State. Carried to a logical conclusion, that is the same as asserting that even if nineteen-twentieths of the stock, bonds, and other evidences of debt of a corporation are held by the citizens of the State of New York, they can have no remedy under this section of the code against a person who intention-

<sup>1</sup> Boston Herald, June 20, 1890.

ally seeks to falsely affect their value because the corporation is chartered by another State. This is hardly protection for either citizens or corporation, — the avowed object of legislation. Second, that the section of the code upon which the indictment was based does not apply to any corporation unless its stock has a 'market price' in the State of New York; and that as the stock of the Lamson Consolidated Store Service Company, the corporation named in the indictment, is not listed upon the stock exchange of New York, and as there is no evidence before your Excellency that it has been sold in New York State, the indictment charges no crime. The counsel arguing this branch of the case, places, it is apprehended, too narrow a construction upon the term 'market price' as used in the code. It is clear that a stock may have a market price in New York if not listed upon the stock exchanges of any of its cities. And further, that it may have a market price in contemplation of the code, even if there is no evidence that it is the subject of frequent sale. But, further, the language of section 435 of the New York criminal code, under which the indictment in this case is found, seems conclusive upon these points. It is: 'A person who, with intent to affect the market price of the public funds of this State or of the United States, or any State or Territory thereof, or of a foreign country or government, or of the stocks, bonds, or other evidences of debt of a corporation or association, or the market price of gold or silver coin or bullion, or of any merchandise or commodity whatever, &c., knowingly circulates any false statement, rumor, or intelligence, is punishable by a fine of not more than five thousand dollars, or by imprisonment for not more than three years, or both.' It is evident that the scope of this section is much broader than is urged by counsel. It, in terms, applies to the funds of New York State, the United States, or of any State or Territory, or foreign country or government, or to a corporation or association. To hold that the word 'corporation' is to be interpreted as meaning corporation organized under the laws of the State of New York, especially after the whole world is included in the other portion of the section, is contrary to the established rules of construction. The words 'corporation or association' used, and 'merchandise or commodity,' also indicate that a comprehensive section was intended, and though penal statutes are ordinarily to be construed in favor of the accused, your Excellency upon the requisition in this case would be without precedent in deciding that the indictment was insufficient for the purpose of extradition upon

the grounds contended for. Therefore, upon the first of the three branches of the case, as presented by counsel for the demanded person, I have to advise your Excellency that the request of his Excellency the governor of New York ought to be complied with.

“Second. The indictment, for the purpose of extradition, charging a crime, and upon its face duly authenticated and certified to by the proper authorities, including his Excellency the Governor of New York, the second point made by counsel for the accused, involving the discretionary power of your Excellency, is to be considered. I am of the opinion that your Excellency has, under our statutes and the practice of executives, a discretionary power in extradition matters. There are many precedents to that effect, and much reason therefor, and it has been the practice in this Commonwealth, occasion arising, for the governor to exercise this discretion which the statutes impose upon him. It may be true that there are no adjudicated cases upon this exact point, but until the statutes of Massachusetts upon the question are declared unconstitutional, your Excellency may well follow the apparently plain meaning thereof, and the practices of your predecessors in office. But while there is a discretionary power lodged in your Excellency it is one that is to be exercised with the greatest caution. There are certain primary questions, as for instance, whether the demanded person is a fugitive from justice of the demanding State, which are always to be considered before a requisition is honored, and they require the exercise of this discretion; but beyond these fundamental inquiries your Excellency is not to go, unless facts and circumstances are brought to your attention which warrant and demand such a course. It is well settled, as has been said, that it is not for your Excellency to inquire into the question of the actual guilt or innocence of the demanded person, or as to possible technical defects in an indictment; and the same reason precludes your Excellency from inquiring into motives which have actuated the authorities in obtaining the indictment. Otherwise, that ‘full faith and credit’ is not given the judicial proceedings of a sister State which is guaranteed by the Constitution, the comity between States is not observed, and such a course would further tend to wreck and to bring into disrepute extradition between States, — a condition of affairs to be carefully and strenuously guarded against. The large mass of testimony, in the form of affidavits, submitted, most of which is hardly competent, does not show a reason for making an exception to this rule, and I advise your Excellency that upon the

second objection made by counsel for the demanded person, your Excellency should decide in favor of the validity of the requisition and honor the same.

“Third. Upon the last point raised by counsel, to wit: Is the demanded person a fugitive from justice, a question of some difficulty arises. The papers, as presented by the requisition of his Excellency the Governor of New York, are *prima facie* proof upon this point. This is well settled, and in the absence of ‘other proof’ controlling or rebutting the affidavit that the demanded person is a fugitive from justice, they warrant and demand its honor by your Excellency. But upon the presentation of other evidence many questions may arise. It is well settled: First, that whether a person duly charged with a crime is a fugitive from justice is a question of fact. Second. That it is a question of fact to be considered by the governor of the State upon which the demand is made on all the facts and circumstances in the case, and the executive may, and in most cases in the nature of things would, hear evidence not before the executive of the demanding State; and third, that upon all these facts and circumstances such governor is to exercise his discretion, a discretion to be confined within the usual legal limits to the point of satisfying himself as to the facts alleged.<sup>1</sup>

There are two theories upon the question as to what constitutes a fugitive from justice. These are: First, that a person charged with the commission of a crime in one State and found in another State, is a fugitive from justice; and second, that a person charged with the commission of a crime in one State, who shall consciously flee therefrom and be found in another, is a fugitive from justice. After a careful examination of the opinions expressed by the text writers upon this subject, a careful reading and sifting of the opinions of the courts in adjudicated cases, and a perusal of the arguments of counsel in, and the opinions of the Attorneys-General in cases that have arisen in this Commonwealth, I have reached the conclusion that neither of these theories is to be accepted as alone sufficient and correct. The first, carried to its logi-

<sup>1</sup> Citing Public Statutes, ch. 218, §§ 1, 2, 3; Rules of Practice, rule 2; *Roberts v. Reilly*, 116 U. S. 80, 97; *Ex parte Reggel*, 114 U. S. 642; *In re Jackson*, 2 Flippin, 183; *In re Fugitives*, 24 Am. Jurist, 226; *Jones & Atkinson v. Leonard*, 50 Iowa, 106; *In re Kingsbury*, 106 Mass. 223; Spear on Extradition, p. 378 *et seq.*; *In re Mitchell*, 4 N. Y. Criminal Reports, 596, as overruling *People, ex rel., v. Pinkerton*, 17 Hun, 199.



cal conclusion, leads to an absurdity, as has been pointed out time and again by counsel and governors of States. Again, if this theory is true, charging a person with the commission of a crime in fact committed more than six years prior thereto and openly known during all that time, and subsequently finding the person in another State, constitutes a fugitive from justice, irrespective of other facts. And, again, if that be the correct theory, the words 'who shall flee from justice' in the Constitution are surplusage. Other illustrations of the consequence of this theory might be given, but it is apprehended that these show, as announced, that it is not wholly satisfactory.

"The second theory, that a person charged with the commission of a crime in one State and consciously fleeing therefrom and being found in another State, constitutes a fugitive from justice, is subject to severe criticism. Under this, whether a person is a fugitive from justice depends entirely upon the consciousness with which he conducted himself after the supposed commission of the crime. If consciousness of guilt is the test, then does it not follow that the shooting of a person through criminal negligence in one State and the going to another State, ignorant of the act, and hence without intention of leaving the first State because of the act, and being found in another State, fail to constitute the person a fugitive from justice? The act is a crime under all laws, and if a person can escape the punishment therefor by accidentally and unknowingly going beyond the jurisdiction of the place of its commission, then there is a serious defect in the laws pertaining to extradition.

"But both of these theories are, to a certain extent and under certain circumstances, correct. The material point, and the link which may bind them both, is the nature of the crime alleged to have been committed. The first, it seems to me, is true and correct when the crime charged is a crime known to the entire world, as murder and the vast majority of crimes. It is, indeed, the theory which should be generally adopted and followed, otherwise interstate extradition may fail of its purpose. On the other hand, the theory that conscious fleeing from the justice of a State may be an essential element to constitute one a fugitive is, it seems to me, true of a certain limited class of crimes known to a single locality (not general, not even usual); provided, the alleged commission of these criminal acts is accompanied by such acts and conduct upon the part of the accused as satisfies an executive that he could not,



even if guilty of the crime charged, have left the demanding State with knowledge thereof, or as apprehending punishment, or as fleeing in order to escape the consequences of an act.

“ This theory has the support of many opinions rendered by attorney-generals, and has been followed by many of the governors of the Commonwealth. It has other eminent support. In *Re Fugitives*, 24 Am. Jurist, 266, Governor Fairfield says, after referring to the first theory : —

“ ‘ I cannot concur in the supposed correctness of these views, but, on the contrary, am of the opinion that all the circumstances should be inquired into in relation to the commission of the offence, the subsequent conduct of the accused, the time and manner of his leaving the State having jurisdiction of his offence, . . . in order to determine the question whether he has fled to avoid a prosecution. I am clearly of the opinion that where one is conscious of having committed treason, felony, or other crime in one State, and leaves that State knowing that by remaining he is subject to prosecution, a sufficient time not having elapsed, or other circumstances having occurred to remove all reasonable apprehension of a prosecution, he may fairly be regarded as a fugitive from justice.’ <sup>1</sup>

“ The cases which hold to the contrary are cases in which the question of consciousness of guilt was not material, there being ample evidence that the flight was intentional and in order to escape the consequences of the crime alleged to have been committed. This is true of the only Massachusetts case, *In re Kingsbury*, upon the point. Applying these two theories to the present case, it is for your Excellency to say whether, under all the facts and circumstances, as presented, the *prima facie* case made out by the papers is rebutted and controlled, and whether William L. Vinal is, as a fact, a fugitive from justice in the true sense of the Constitution.”

§ 576. *Vinal Case; Decision of Governor.* — On the day of which the above report bears date, the governor of Massachusetts addressed to the governor of New York the following communication : —

<sup>1</sup> Mr. Wyman cites *In re Mitchell*, 4 N. Y. Criminal Reports (opinion by Governor Hill), 596, as overruling *People v. Pinkerton*, 17 Hun, 199 ; *Ex parte Smith*, *ubi supra* ; Hurd on Habeas Corpus, 606 *et seq.* ; Spear on Extradition ; Burrill's Law Dictionary, title “ Fugitives from Justice ;” Bouvier's Law Dictionary, title “ Fugitives from Justice.”

## COMMONWEALTH OF MASSACHUSETTS,

EXECUTIVE DEPARTMENT,

BOSTON, June, 16, 1890.

*To His Excellency David B. Hill, Governor, Albany, N. Y.*

SIR, — Upon the 25th day of April last past I received from your Excellency a requisition for the return of William L. Vinal, an alleged fugitive from justice. Before the same was acted upon, or report made upon the sufficiency of the papers by the attorney-general, to whom I had referred them, counsel for the demanded person asked for a hearing. This, in accordance with the practice obtaining in this Commonwealth and elsewhere, was accorded, and April 26 was fixed as the date therefor. At that time the demanded person was represented by counsel, and the State of New York by Assistant District-Attorney John D. Lindsay, of New York County. The hearing was adjourned to May 5, when arguments were made and evidence introduced. It was again adjourned to May 9, in order that replies to the affidavits presented by counsel for the alleged fugitive might be filed. On the latter date these replies were submitted and arguments made by Colonel Fellows, the district attorney for New York county, on behalf of the State of New York, and by Messrs. Benton, Elder, and Swasey, for the demanded person. These arguments, after considerable delay in receipt of the stenographer's report thereof, together with all the evidence and other papers in the case, I transmitted to the attorney-general for an examination as to the legal questions involved. His report, a copy of which is herewith respectfully submitted, I have just received, and in its conclusions I concur. To the question whether the demanded person is in fact a fugitive from justice I have given my personal attention, and after careful examination of the same, and the facts offered in evidence at the hearings before me, and which were not before your Excellency at the time the requisition was issued, I am unable to satisfy myself that William L. Vinal is, in the true sense of the Constitution, a fugitive from justice. As your Excellency so well said in your able decision in the case of Mitchell, reported in Fourth New York Criminal Reports, "the power of extradition vested in the executive is a high prerogative which should be cautiously and judiciously exercised, and only in clear cases should it be invoked." Actuated by the same spirit and feeling, the same sense of duty, both to the citizens of the Commonwealth and to the State of New York, which is so well

expressed by your Excellency in the opinion above referred to, I cannot satisfy myself that the provisions of the Constitution, in the true sense, and as interpreted by eminent authorities, apply to this case. It follows that I must respectfully decline to comply with the requisition.

I have the honor to be, yours with great respect,

JOHN Q. A. BRACKETT,

*Governor of Massachusetts.*

While the report of Mr. Wyman positively advised the governor on two points, — the sufficiency of the indictment and the inadmissibility of an investigation of the motives of the prosecution, — it left him to form his own conclusions on the question whether Vinal was a fugitive from justice. It has been suggested that upon the principles laid down for the determination of that question, the governor should have delivered him up, since the acts with which Vinal was charged, and upon proof of which he was indicted, jointly with the two other persons named in the indictment, constituted the offence of conspiracy at common law. It was also stated in the affidavit of the district attorney of the city of New York, above referred to, that the facts originally brought to his attention tended to show a conspiracy, and that upon the evidence submitted to the grand jury, sufficient proof existed to warrant the finding of an indictment against the persons named for having, in pursuance of an unlawful combination and agreement, violated the article of the penal code under which the indictment was found. It may readily be conceded that, if the indictment had, in substance, charged a conspiracy, the governor would, upon the principles laid down for his guidance, have been bound to deliver Vinal up, although the indictment had not under the statute charged a conspiracy in form. But the indictment merely charged the three persons joined in it with having feloniously and knowingly circulated false rumors for the unlawful purpose set forth, and did not substantially charge a conspiracy; and Vinal might have been separately convicted and sentenced under it without any proof of conspiracy at all. It seems to us, therefore, that the governor would not have been war-

ranted in assuming that Vinal was charged with conspiracy because he was jointly indicted with other persons, although a conspiracy to commit the particular acts alleged would no doubt have been indictable as a conspiracy at common law.<sup>1</sup> In determining whether Vinal was a fugitive from justice, the governor was bound to decide whether he was a fugitive from justice in respect to the offence charged, and could not consider facts which were not material as proof of that offence, though they tended to establish the commission of another crime, in respect of which, if it had formed the basis of the requisition, he would have been bound to hold that Vinal was a fugitive. On the other hand it would seem that the authorities of New York, standing upon the constitutional provision, were bound to indict Vinal under the statute. The offence charged is a felony, whereas conspiracy is only a misdemeanor; and, moreover, by proceeding under the statute they avoided the technical difficulties that always attend a prosecution for conspiracy.

§ 577. **Vinal Case; Examination of Report.** — The report of Mr. Wyman, made and submitted by direction of the attorney-general of Massachusetts, marks, if it shall hereafter be accepted and followed in that State, what must be regarded as

<sup>1</sup> "Every one commits the misdemeanor of conspiracy who agrees with any other person or persons to do any act with intent to defraud the public, or any particular person, or class of persons, or to extort from any person any money or goods. Such a conspiracy may be criminal, although the act agreed upon is not in itself a crime.

"An offender convicted of this offence may be sentenced to hard labor.

"*Illustrations.* — The following are instances of conspiracies with intent to defraud: —

"A conspiracy to defraud the public by a mock auction. *R. v. Lewis*, 11 Cox C. C. 404. A conspiracy to raise the price of the funds by false rumors. *R. v. DeBerenger*, 3 M. & S. 67. A conspiracy to induce a person to buy horses by falsely alleging that they were the property of a private person, and not of a horse dealer. *R. v. Kendrick*, 5 Q. B. 49. A conspiracy to induce a man to take a lower price than that for which he had sold a horse, by representing that it had been discovered to be unsound. *Carlisle's case*, Dears. 337. A conspiracy to defraud generally, by getting a settling day for shares of a new company. *R. v. Aspinwall*, L. R. 1 Q. B. D. 730."

Sir J. F. Stephen, Dig. C. L. art. 336; cited by Wharton, Crim. L. § 1347. See also Bishop's Crim. L. vol. ii. §§ 171, 172; 7th ed. *Reg. v. Esdaile*, 1 F. & F. 213; *Reg. v. Brown*, 7 Cox C. C. 442; *Reg. v. Gurney*, 11 Id. 414.

the adoption of a different theory and a different practice from those that have sometimes prevailed there in interstate rendition. The rule which it lays down in regard to the sufficiency of the indictment, as evidence of the existence of a charge of crime, is that which is generally held except by those who contend, both upon principle and upon the authority of several well-considered cases, that the requisition of the demanding governor, accompanied with a duly certified copy of an indictment, is, within the meaning of the Constitution and the act of Congress, conclusive evidence of the existence of such a charge, behind which the executive upon whom the demand is made cannot go. But the report is of especial significance in rejecting that broad theory of executive discretion which prevailed in the case of Kimpton,<sup>1</sup> and in the case of Pickert.<sup>2</sup> To say that the executive upon whom the demand is made is authorized and at liberty to inquire into the motives of the requisition, and impute ulterior purposes to the authorities of another State, is an extreme pretension. This topic, however, we shall more fully discuss hereafter.<sup>3</sup> The subject now to be examined is the decision upon the question of fleeing from justice.

The report of Mr. Wyman contained no definitive opinion on that point, leaving it to the governor to determine the question upon the principles furnished him. In the first place, the report in part accepted and in part rejected the theory that, in order to constitute a person a fugitive from justice within the meaning of the Constitution, it is sufficient to show that he is charged with the commission of a crime in one State and is found in another State. In the second place, it also in part accepted and in part rejected the theory that only those are fugitives from justice who "consciously flee," under a sense of guilt. In regard to the latter theory it was objected that, carried to its full extent, it would exempt a person who negligently shot another, and ignorant that he had done so went into another State. The reconciliation of the two theories and the test of their accepta-

<sup>1</sup> *Infra*, chapter on Surrender.

<sup>2</sup> *Supra*, § 574, note.

<sup>3</sup> *Infra*, chapter VI.

bility was found in the character of the crime charged. The first theory, says the report, that it is enough that the person is charged with crime in one State and is found in another, "is true and correct when the crime charged is a crime known to the entire world, as murder and the vast majority of crimes. It is, indeed, the theory which should be generally adopted and followed; otherwise, interstate extradition may fail of its purpose. On the other hand, the theory that conscious fleeing from justice may be an essential element to constitute one a fugitive is, it seems to me, true of a certain limited class of crimes known to a single locality (not general, not even usual); provided, the alleged commission of these criminal acts is accompanied by such acts and conduct on the part of the accused as satisfies an executive that he could not, even if guilty of the crime charged, have left the demanding State with knowledge thereof, or as apprehending punishment, or as fleeing in order to escape the consequences of an act." It must be admitted that this reasoning has great force, but we are unable to receive it as being entirely satisfactory. It avoids, and no doubt deliberately, the theory urged in behalf of Vinal,—that, while flight, as the result of a consciousness of guilt, may be implied as to offences *mala in se*, it cannot be inferred as to offences merely *mala prohibita*. It may well be argued that to attempt to apply this theory to the case of Vinal would be to confuse the distinction between *malum prohibitum* and *malum in se*, and to make the former synonymous with a statutory offence. This would hardly be accurate. The distinction between *malum prohibitum* and *malum in se* is moral, and not wholly legislative. In determining whether an offence belongs to the one category or the other, we consider the quality of the act, and not whether it is punishable at common law or by statute. The question is whether the *act* is evil in itself. If it is, the moment it — the *evil act* — is made a *crime*, we have an offence called *malum in se*. There are many acts universally recognized as evil, which, on grounds of expediency, are not punished by law; but if one of such acts be forbidden by statute, the offence so created is none the less *malum in se*.

The act does not lose its evil quality by being made a penal offence. This being so, we must hold that the offence with which Vinal was charged was *malum in se*. He would have a difficult argument who should contend that the circulation of false reports to depreciate the value of stocks, bonds, and evidences of debt, was not an act of deliberate wickedness, unlawful, if not criminal, and a violation of the primary principles of morality. Such an act contains quite as many of the elements of evil as theft, which is universally recognized as an offence *malum in se*.<sup>1</sup> It is also to be observed that many of what are regarded as *mala prohibita* are pun-

<sup>1</sup> Bouvier, in his Law Dictionary, says: "An offence *malum in se* is one which is naturally evil, as murder, theft, and the like; offences at common law are generally *mala in se*. An offence *malum prohibitum*, on the contrary, is not naturally evil, but becomes so in consequence of its being forbidden; as playing at games which, being innocent before, have become unlawful in consequence of being forbidden." This is cited in Abbott's Law Dictionary, with the following observations: "Things which are evil in themselves are termed *mala in se* in contradistinction to those things which are not evil in themselves, but are only forbidden by the laws, and which are therefore called *mala prohibita*, or forbidden evils; and sometimes *mala quia prohibita*, to indicate that they are evils by reason of the prohibition only." Blackstone, who is always cited and may be termed the leading authority on the distinction between *mala prohibita* and *mala in se*, specifies, among the examples of the latter, theft. 4 Com. \*\*7-10. As examples of *mala prohibita* he mentions game laws, laws against exercising certain trades without having served an apprenticeship, for not performing statute-work on the public roads, "and for innumerable other positive misdemeanors;" and adds: "Now these prohibitory laws do not make the transgression a moral offence, or sin: the only obligation in conscience is to submit to the penalty if levied. It must, however, be observed, that we are here speaking of laws that are simply and purely penal; where the thing forbidden or enjoined is wholly a matter of indifference, and where the penalty inflicted is an adequate compensation for the civil inconvenience supposed to arise from the offence. But where disobedience to the law involves in it also any degree of public mischief or private injury, there it falls within our former distinction, and is also an offence against conscience." 1 Com. \*\*57-58. By "our former distinction," he refers to *mala in se*, which he says we are in conscience bound to abstain from, apart from their legal criminality. Anderson, in his very excellent Law Dictionary cites, as instances of *mala in se*, murder, theft, and perjury, and says that they "contract no additional turpitude from being declared unlawful by a human legislature." On the other hand, he says that *mala prohibita* are such acts as are "in themselves indifferent," and "become right or wrong, just or unjust, duties or misdemeanors, as the municipal legislator sees proper for promoting the welfare of society, and more effectually carrying on the purposes of civil life."



ished under almost all systems of legislation, so that the fact that an offence is merely *malum prohibitum* by no means warrants the assumption that the person charged may have been ignorant of the law. It seems to us that, assuming ignorance of the law to be an admissible plea in determining the question of flight, the only general effect that could legitimately be given to the distinction between *malum prohibitum* and *malum in se* would be to render absolute the presumption of knowledge where the offence is *malum in se*. In the Roman law there were certain classes of persons "*quibus permissum est jus ignorare*," such as women, soldiers, and persons who had not reached the age of twenty-five. By other classes of persons ignorance of the law could not be alleged. But even the privileged classes could not avail themselves of the plea of ignorance if they had violated legal provisions founded upon the *jus gentium*, which was held to be knowable *naturali ratione*. "This," says Austin, "coincides with our distinction between *malum prohibitum* and *malum in se*; and the distinction is reasonable. For some laws are so obviously suggested by utility, that any person not insane would naturally surmise or guess their existence; which they could not be expected to do where the utility of the law is not so obvious. And most men's knowledge of the law is mostly of this kind. They see that a particular act would be mischievous, and they conclude that it must be prohibited. The conduct of nineteen men out twenty, in nineteen cases out of twenty, is rather guided by a surmise as to the law, than by a knowledge of it."<sup>1</sup>

We are unable to accept the ingenious theory propounded in the cases of Bartlett and Wyeth, and pressed in behalf of Vinal, but rejected in the report of Mr. Wyman, that the framers of the Constitution intended to substitute and did substitute proof of flight for proof of criminality. And we are equally unable to accept the corollary that the burden of proving flight as a fact rests upon the demanding executive. If the theory in question be correct, it may well be asked whether the framers of the Constitution did not fail in their

<sup>1</sup> Austin's Jurisprudence, vol. i. pp. 484-485; 5th ed. London.



attempt to safeguard the administration of justice. In discarding, for the purpose of satisfying the intimate Federal relations of the States, a *prima facie* showing of criminality, they would have established in its stead a requirement not admitting of positive proof, capable of interminable inquiry, and potentially involving the substantiation of a greater number of allegations than the rule which they rejected. Among those allegations there would have been in many cases, especially where the culprit went away before his act was discovered and a charge formulated, the allegation of guilt, the very thing discarded. This would have been the necessary result of adopting, as the condition of surrender, proof of the existence of the *state of mind* of which we predicate "conscious flight." That Mr. Wyman fully perceived this to be so, is shown by his adverse criticism of the theory that conscious flight must be proved, and, in order to illustrate the results of the theory, his supposition of the case of a person who negligently shoots another, and, ignorant of the act, departs from the jurisdiction in which he committed it. We will take even a stronger case than that, and suppose that a man, actuated by some grievance, real or fancied, defiantly kills another, and then goes into another State on business, intending to return to that in which he committed the crime, and give himself up. Being in such a frame of mind, he may naturally be indisposed to be handcuffed and brought back in custody. He does not go away because he "feels fear;" he does not carry in his breast what Mr. Choate so vividly described as the "felt agony of remorse." Yet, to listen to a plea that he was not a fugitive from justice in the sense of the Constitution, might be thought to be fantastical. But, if the words "flee from justice," as used in the Constitution, must be held to signify conscious or intentional flight, and hence to confer upon the person charged the right to deny and to require proof that he fled in fact, should he be refused opportunity to assert this right?

For the reasons that we have already stated, we are not convinced of the correctness of the theory of conscious or intentional flight, even in regard to the limited class of cases to which Mr. Wyman confines it; although, if we were to receive

it at all, we should, except as to offences *mala in se*, accept his distinction as affording the most logical and best practicable rule. But there are also other reasons why we cannot regard the theory as satisfactory. In the law both in the United States and in England the presumption of knowledge in criminal matters is universal. It applies to statutory as well as to common-law offences, and is essential to the administration of justice.<sup>1</sup> It is in effect implied in every penal law. How strange, therefore, to contend that the framers of the Constitution, in endeavoring to insure the administration of the penal law, intended to destroy that presumption, and to say that, although while within its reach a person was conclusively held to know the law, yet, when arrested elsewhere to be brought back to answer, it must be *proved* that he knew it. "True it is," this argument may be said to run, "that, while within a particular jurisdiction, a person is held to know the law, but this presumption is valid only in that place and lasts only so long as he remains there. If he goes away, he is not held to have possessed such knowledge. His mind then becomes *tabula rasa* on the subject. And this, too, although the moment he enters the new jurisdiction, from which it is sought to recover him, it is conclusively presumed that he knows the law there, and, if he violate some rare and obscure penal statute, cannot plead ignorance." If this reasoning be sound, the advantage, to those criminally engaged, of maintaining a fugitive condition is manifest. But, another objection to the theory of conscious or intentional flight as applied by Mr. Wyman, is that the constitutional provision includes all crimes without regard to their degree or quality. The act of Congress, in prescribing the form of the demand, also avoided any distinction between

<sup>1</sup> "All persons subject to a law are irrebuttably presumed to know what it is." Wharton's Law of Evidence, 2d ed. § 1240. "A sane person who commits a public wrong, for instance, is bound to know that the wrong is subject to penal consequences: if it is *malum in se*, his natural consciousness points to this, and it would be fatal to government to allow want of such natural consciousness to be a defence; if it is *malum prohibitum*, it should be known by him, for it is his duty when he undertakes to abide in a community to know what it prohibits, since otherwise no police laws could be enforced." Id. § 1241.

different classes of crimes; and in requiring, in accordance with the Constitution, proof of the existence of a charge, instead of proof of criminality, excluded in every case an inquiry into the subject of guilt. Still another objection is that any classification of crimes depending upon the views of particular executives would be shifting and arbitrary, so that the Constitutional provision would be differently executed in different States, and at different times in the same State. The fourth and last objection we shall mention is that the Constitutional provision has been held to apply to any and every act made criminal by the laws of the demanding State. Each State has thus an equal right with all others to compliance with its demands, without being called upon to justify its laws or to show that they are such as generally exist. It is not material that the act charged is not a crime in the State upon which the demand is made, or in any other State than that from which the demand proceeds. Much less, therefore, is it to be taken into account that the act is not generally criminal.

§ 578. What is a "Fugitive from Justice" in the Extraditionary Sense? — If to "flee from justice" in the sense of the Constitution means an intentional departure to escape prosecution anticipated or begun, of which proof may be exacted, it is obvious that this becomes the crucial point in interstate rendition, and that hereafter this will be the question to be met *in limine* wherever the person whose delivery up is demanded chooses to assert his rights. If this theory should be adopted and faithfully carried out, it is not extravagant to say that its effects must be far-reaching, and might in the end create a condition for which the abandonment of the theory would be the only remedy. But, is this the true interpretation of the Constitution? We venture to suggest that there is another view of the subject, founded upon principle, compatible with common sense, and justifiable in law, which is worthy of consideration. This view is that, proof of criminality having been dispensed with, it was intended that the Constitutional provision should in general apply to persons who, being charged in one State with having committed a criminal act within its territorial jurisdiction, should, when

it was sought to subject them to prosecution, be found in another State?<sup>1</sup> This by no means renders the words "flee from justice" surplusage. It excludes the large class of cases in which the presence of the accused in the State in which the crime is charged to have been committed was only constructive, of which we shall have more to say hereafter. It was to this class of cases that the Supreme Court referred in *Roberts v. Reilly*,<sup>2</sup> when it said that the question whether the person demanded was a fugitive from the justice of the State the executive authority of which made the demand, was "a question of fact." For, subsequently referring to that question, the court said: —

"On the question of fact, whether the appellant was a fugitive from the justice of the State of New York, there was direct and positive proof before the governor of Georgia, forming part of the record in this proceeding. There is no other evidence in the record which contradicts it. The appellant in his affidavit does not deny that he was in the State of New York about the date of the day laid in the indictment when the offence is said to have been committed, and states, by way of inference only, that he was not in that State on that very day; and the fact that he has not been within the State since the finding of the indictment is irrelevant and immaterial. To be a fugitive from justice, in the sense of the act of Congress regulating the subject under consideration, it is not necessary that the party charged should have left the State in which the crime is alleged to have been committed, after an indictment found, *or for the purpose of avoiding a prosecution anticipated or begun*,<sup>3</sup> but

<sup>1</sup> Where an affidavit as to flight accompanies a requisition, it generally alleges that the accused was in the State in which the crime is charged to have been committed, at the time of its commission, and states that affiant is *informed and believes* that such person is a fugitive from justice. So far as the affidavit proves anything, it merely tends to show the two facts of presence in the State at the commission of the crime and departure therefrom afterwards. The statement on information and belief relates to the latter fact, and not to the condition of mind of the accused. It is true that, in regard to such condition, an averment on information and belief is all that could be made, but it would at the same time be worthless as evidence of the real fact.

<sup>2</sup> 116 U. S. 80, 95, 97.

<sup>3</sup> The italics are our own. If, as contended in Vinal's behalf, it is necessary to prove as a fact that the person charged went away for the purpose of evading punishment, and that he is a fugitive from justice in that sense, what would be

simply that having *within a State* committed that which by its laws constitutes a crime, when he is sought to be subjected to its criminal process to answer for his offence, he has left its jurisdiction and is found within the territory of another."

It may be observed that the Supreme Court defines a fugitive from justice "in the sense of the act of Congress" of 1793, and not expressly in the sense of the Constitution. The court, however, in another part of its opinion, refers to that act as a "contemporary construction" of the constitutional provision, and so treats it. And the act of Congress says that whenever the executive authority of any State "shall demand any person as a fugitive from justice, . . . and shall moreover produce the copy of an indictment found, or an affidavit . . . charging the person so demanded, . . . it shall be the duty of the executive authority of the State or Territory to which such person shall have fled, to cause" such person to be arrested to the end that he may be delivered up.<sup>1</sup> The employment of the phrase "flee from justice" merely to indicate a change of place, by going from one State into another, is very forcibly illustrated by the language of this act, which describes the official who is to cause the arrest and delivery, as the executive authority of the State or Territory to which the person charged "shall have fled." The Constitution says that a person shall be delivered up who, being charged in any State, shall "flee from justice" and "be found" in another State. This clearly excludes the notion that the accused must have sought asylum in the latter State; and it is not to be supposed that Congress in-

the rule with regard to a person who, while on a railway train from Portland to New York, killed a fellow-passenger in Massachusetts, and then continued on his way unmolested to his destination? His ticket was from Portland to New York; perhaps his home was in the latter city; and, when he arrived there, his presence in New York and his absence from Massachusetts were in no wise related to the crime committed while *in transitu* in the latter State. If the question be one simply of fact, to be determined upon the proofs, it would be a most violent, arbitrary, and unwarrantable assumption to say that he fled from Massachusetts to escape prosecution.

<sup>1</sup> See 4 Kent's Comm. \*32, and notes (12th or 13th ed.) as to absoluteness of duty to comply with a demand preferred in accordance with the act of Congress.

tended to superadd such a condition, or that it used the term "fled" in any other than that *locational* sense in which it appears to have understood the phrase "flee from justice," when, in providing that the person should be *demanded* as "a fugitive from justice," it only required *evidence* that he was charged with the commission of a crime in the State from which the demand emanated. These two facts — the charge of crime in one State and the being found in another — comprised the elements which, to minds trained in the common law, with its strict theory of the local jurisdiction of crimes, constituted the flight from justice; and the provision as to fleeing from justice at once recognized and conserved that theory.<sup>1</sup> In this relation it should be recollected that the constitutional provision is to be construed in the light of its manifest purpose and effect, and not as a penal statute, involving a penalty upon conviction of crime.<sup>2</sup> If it were read in the latter sense, it might be argued that the charge of crime must precede the departure; for the provision is that "a person charged in any State . . . who shall flee from justice and be found in another State," shall be delivered up.

<sup>1</sup> That this principle was in the minds of the framers of the Constitution, and was deemed by our statesmen, both then and afterwards, to be of great importance, is shown by the Constitution and its amendments. By section 2, art. 3, it is provided, in respect to the judicial power of the United States, that "the trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed . . ." In the 6th amendment it is provided that "in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law. . . ."

<sup>2</sup> The difference between holding a person to be a fugitive from justice in the sense of a penal statute, and holding him to be a fugitive from justice in the extraditionary sense, may be illustrated by the case of a statute of limitations, in which it is provided that the bar to prosecution arising from lapse of time shall not apply to fugitives from justice. In this case the inquiry directly involves the question of liability to prosecution and punishment, and is a matter of defence to be determined by the jury upon the facts. *United States v. O'Brian*, 8 Dillon, 381. In extradition or rendition proceedings the object is merely to bring the person charged before the court having jurisdiction of the offence, in order that his liability to punishment may be determined. His delivery up as a fugitive from justice in such proceedings would not preclude his assertion before that court of the bar of the statute as a matter of defence. *Supra*, § 445.

Such a construction has, indeed, been suggested, but it is not known ever to have found acceptance. For the obvious purpose of the clause was to secure each State against the frustration of its criminal procedure by the departure of a person from its jurisdiction, either before or after the formulation of a charge against him. It was intended to require persons, who had been in a State, to answer for what they were legally charged to have done there against its laws. The question of guilt or innocence, or of the imposition of a penalty, was no more involved than by the arrest of a person in the State in which the alleged criminal act was committed. It was merely intended to render the administration of justice efficient by making it certain. And the great design was that certainty and efficiency should prevail throughout the United States, unobstructed by the international doctrine of the right of asylum.

Not only, therefore, is it not unreasonable to argue that the charge of commission of crime in one State and the being found in another State constitute a fleeing from justice in the sense of the Constitution, and render the person charged a fugitive from justice in the sense of the act of Congress, but it may also be maintained upon the clearest and most conclusive authority that those two facts are uniformly held to make a man a "fugitive from justice" or a "fugitive criminal" in the sense in which those terms are employed in extraditionary relations generally. On this subject it is permissible to refer to the British Extradition Act, 1870, in section 26 of which there is the following clause: "The term 'fugitive criminal' means any person accused or convicted of an extradition crime committed within the jurisdiction of any foreign state who is in or is suspected of being in some part of Her Majesty's dominions; and the term 'fugitive criminal of a foreign state' means a fugitive criminal accused or convicted of an extradition crime committed within the jurisdiction of that state." In *Regina v. Nillins*,<sup>1</sup> a demand was made by Germany for the extradition of one Nillins who, being in England, was charged with having obtained goods

<sup>1</sup> 53 L. J. M. C. 157.



by false pretences from persons in Germany, by letters written and mailed at Southampton, in England. The court held that the crime was committed in Germany, and that the prisoner was within the definition of section 26 of the act. This case goes even beyond our rule, for Nillins was not shown to have been in Germany either at or after the commission of the crime. But we are not compelled to resort to the treaties or legislation of any other country than the United States for proof of our position. The government of the United States has treaties of extradition with most of the leading nations of the world, and in those mutual arrangements there is, in regard to the question now under consideration, but one rule, and that is the rule for which we now contend. The oldest of the extradition treaties of the United States now in force is found in the tenth article of the treaty with Great Britain of the 9th of August, 1842, commonly known as the Webster-Ashburton treaty, — an instrument of which every line bears the marks of careful thought and expression, and in which the English language, of which Mr. Webster was a master, was not employed in a loose and inartificial manner. The caption of this treaty, as it stands in the original instrument signed by the negotiators, is as follows: "A Treaty to Settle and Define the Boundaries between the Territories of the United States and the Possessions of Her Britannic Majesty, in North America; For the Final Suppression of the African Slave Trade; and for the Giving up of Criminals Fugitive from Justice, in certain cases." Among the causes recited in the preamble as leading to the conclusion of the treaty, it is declared that "it is found expedient, for the better administration of justice and the prevention of crime within the territories and jurisdiction of the two parties respectively, that persons committing the crimes hereinafter enumerated, *and being fugitives from justice*, should, under certain circumstances, be reciprocally delivered up." What, we may ask, was the interpretation given to this language by the negotiators? Turning to the 10th article, we find it stipulated that "all persons" shall be delivered up to justice "who, being charged with" the crimes enumerated, "committed



within the jurisdiction" of either of the contracting parties, "shall seek an asylum or shall *be found* within the territories of the other." The treaty was duly ratified with the advice and consent of the Senate, and is to-day the law of the land. The rest of the extradition treaties of the United States are of the same purport and contain the same definition. They describe the persons to be delivered up as "fugitives," as "fugitives from justice," or as "fugitive criminals," and then without exception provide that "persons," or "all persons," shall be delivered up who, being charged with the commission of crime within the jurisdiction of one of the contracting parties, "shall seek an asylum or shall be found," or merely "shall be found," within the territories of the other. And the only proof required in such cases, either by the treaties or by the statutes passed to give them effect, is a *prima facie* showing of criminality. We may find the same conception and definition of flight from justice in the Constitution and the act of Congress of 1793. But, in view of the previous history of the subject, of the long-existing practice of recovering criminals merely upon the indorsation of a warrant of arrest, of the great design of rendering closer and more intimate the relations of the States, and of preserving law and order throughout the Union, proof of criminality was not required. The Constitution provides that "full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State." And in consonance with this principle and, indeed, in execution of it, nothing in the nature of evidence was exacted beyond proof that the person whose recovery should be sought was "charged in any State with treason, felony, or other crime."

§ 579. *Matter of Mitchell*. — Reference was made in the case of *Vinal*<sup>1</sup> to the decision of Governor Hill in the case of *Mitchell*. The question involved in this case was, it is true, whether the person charged was a fugitive from justice, and in that relation Governor Hill made certain pertinent observations upon the importance of the process of interstate rendition as affecting personal liberty. But the real question

•      <sup>1</sup> *Supra*, §§ 575, 576.

at issue was whether Mitchell had actually been present in the State from which he was said to be a fugitive. He was charged by affidavit in New Jersey with manslaughter, the allegation being that he was the owner of a building there, which, by reason of being permitted to stand, after a fire, in an unsafe condition, fell and occasioned the death of four persons. The charge was criminal negligence, constituting manslaughter. Mitchell had for many years been a resident of the city of New York. He was not in New Jersey when the accident occurred, and had not been there for some weeks previously; and on these grounds he made an affidavit denying that he had fled from New Jersey, and that he was a fugitive from justice. Governor Hill held that Mitchell could not be a fugitive except by construction, and hence did not come within the Constitutional provision.<sup>1</sup>

§ 580. **Case of "Electric Sugar" Swindlers.** — On January, 28, 1889, three indictments were found in the county of New York, State of New York, charging William E. Howard and certain other persons, known as the electric sugar swindlers, with grand larceny in the first degree, under the New York code, for obtaining money by false pretences as to a supposed electric sugar-refining process, falsely alleged to have been invented by the husband of one of the accused persons. On the same day an application was made to Governor Hill by the district attorney of the county of New York for a requisition upon the governor of Michigan, in which State the offenders lived and to which they returned after committing their depredations, which netted them upwards of two hundred thousand dollars. A requisition, accompanied with the usual documents, was duly granted, and, upon its reception, Governor Luce, of Michigan, granted a warrant for the fugitives' surrender. On a petition presented in behalf of the fugitives, a rehearing was granted, and the question was argued before Governor Luce, whether the affidavit as to flight, annexed to the requisition, was sufficient to show that they were fugitives from justice. This affidavit was in the usual form, alleging

<sup>1</sup> *Matter of Mitchell*, 4 N. Y. Crim. Rep, 596; decision of Governor Hill, December, 1885.

that the defendants were in New York at the time of the commission of the crime charged, and stating that the affiant had reason to believe they were fugitives from justice and were in Michigan. It was also argued for the defendants that the indictment did not charge a crime, and that the application was for private ends. Touching the last point there was an affidavit of the district attorney of the county of New York, to the effect that he had made the application in good faith, and proposed to try the defendants without delay upon their surrender. Governor Luce rendered no formal opinion, but held that the warrant already issued should stand. In a letter written from recollection of the case, there being no papers but the petition filed with the governor, Mr. Charles R. Whitman, of Ann Arbor, Michigan, who represented the State of New York in the hearing, says : —

“In effect he [the governor] held that he could not inquire behind the papers presented; that the indictment charging in form a crime under the laws of the State of New York, and the affidavit sufficiently showing that the parties were fugitives from New York, he had no occasion to go further; but he intimated, in the argument, that the affidavit of Col. Fellows [the district attorney of the county of New York] was conclusive as to the purport of the application.”<sup>1</sup>

The prisoners were accordingly delivered up. One of them, William E. Howard, was tried and convicted before Recorder Smyth, of the city of New York, in May, 1889, and was sentenced to imprisonment in the State prison for nine years and ten months. The other defendants were, after some detention, discharged on their own recognizance.

## 2. *Fugitives by Construction.*

§ 581. **Person charged must have been in Demanding State.** — A wholly distinct class of cases are those in which the person charged was not in the demanding State or Territory at the time of the commission of the offence.<sup>2</sup> It was said by

<sup>1</sup> For reference to this case and for the letter of Mr. Whitman, I am indebted to Mr. Lindsay, assistant district attorney of the county of New York.

<sup>2</sup> Leary's case, 10 Ben. 197.

the Supreme Court of the United States in *Ex parte Reggel*,<sup>1</sup> that a fugitive is entitled under the act of Congress "to insist upon proof that he was within the demanding State at the time he is alleged to have committed the crime charged, and subsequently withdrew from her jurisdiction, so that he could not be reached by her criminal process."

§ 582. **Case of Joseph Smith, the Mormon Prophet.** — This point appears first to have been judicially decided in the case of Joseph Smith, the Mormon Prophet, whose surrender was demanded by the governor of Missouri of the governor of Illinois in 1842, as an accessory before the fact to an assault with intent to commit murder in the former State. Having been arrested on a warrant of the governor of Illinois, Smith obtained from the United States Court for the district of Illinois a writ of *habeas corpus*. On the hearing of the writ before Judge Pope, evidence was offered to prove that the relator was not in Missouri at the date of the alleged offence. The court declined to decide whether such evidence was admissible, but discharged the prisoner on the ground that the affidavit on which the requisition was based was defective for the reason, among others, that it did not allege that Smith actually committed the crime in Missouri.<sup>2</sup> Judge Pope said that Smith could not be a fugitive from the justice of Missouri, if the crime was not committed by him there.

§ 583. **Other Cases.** — In 1876, the governor of Wisconsin demanded the rendition from Illinois of Mr. Storey, editor of the Chicago "Times," for libel. The governor of Illinois referred the matter to the attorney-general of the State, who advised that while the offence was renditionable, and Wisconsin might punish it if she had the offender within her jurisdiction, yet it not being shown that he was in Wisconsin when he committed the offence, it was not a proper case for surrender. The attorney-general also observed that so far as appeared from the papers, Mr. Storey might have been in Illinois when the offence was committed, and, if so, he was answerable in that State, whose laws make provision for the

<sup>1</sup> 114 U. S. 642. See *infra*, § 590.

<sup>2</sup> *Ex parte Joseph Smith*, 3 McLean, 121. See *supra*, § 555.

punishment of those who there aid or abet, incite or procure the commission of crime in other States.<sup>1</sup> In August, 1889, Governor Lowry, of Mississippi, demanded of Governor Foraker, of Ohio, the surrender of Richard Carroll, general superintendent of the Queen and Crescent line of railway, running from Cincinnati, Ohio, to New Orleans, Louisiana, on the charge of having aided and abetted a prize-fight between Sullivan and Kilrain, in Mississippi, the railway company in question having transported the parties to the appointed place. Governor Foraker, after considering the case, refused to comply with the demand, on the ground that Mr. Carroll was not in the State of Mississippi at the time, nor in any way connected with the fight or responsible for it.<sup>2</sup>

§ 584. **False Pretences.** — The question of constructive presence at the commission of a crime has frequently arisen in the case of obtaining money or goods by false pretences, and it has been held that such presence in the demanding State is not sufficient as a basis for a requisition for the surrender of a person as a fugitive from justice, although, if the person charged were to come within the jurisdiction of that State, he might be arrested and punished for the false pretences there committed while he was corporeally elsewhere. Thus where a resident of Iowa made false pretences in a letter to a firm in Boston, it was held that he could not be surrendered in response to a requisition of the governor of Massachusetts, demanding him as a fugitive from justice.<sup>3</sup> The

<sup>1</sup> Storey's case, 3 Cent. L. J. 636.

<sup>2</sup> New York Times, August 14, 1889. In 1877, Governor Bedle, of New Jersey, made a requisition upon Governor Robinson, of New York, for the surrender of one Baldwin, a resident of the latter State, who was charged, with other directors of a New Jersey insurance company, with "conspiracy to defraud," alleged to have been committed in New Jersey on a day on which Baldwin was in fact in the State of New York, though not long before he had visited New Jersey on business connected with matters out of which the conspiracy was alleged to have arisen. Governor Robinson held that the crime, if any, committed by Baldwin, was committed in the State of New York, and on that ground refused to surrender him as a fugitive from justice. Cited as from public papers of Lucius Robinson, pp. 170-177, by Governor Hill, in matter of Mitchell, 4 N. Y. Crim. Rep. 596, 602.

<sup>3</sup> Jones v. Leonard, 50 Iowa, 106; 1878.

supreme court of Ohio made the same decision in regard to a demand of the governor of New York, it being proved that the false pretences, if any, were made to an agent of the New York firm in Cleveland, Ohio, and that the person charged had not since been in New York.<sup>1</sup> In *In re Mohr*, before the supreme court of Alabama, in 1883, the relator was arrested on a warrant of the governor of that State issued upon a requisition of the governor of Pennsylvania accompanied with a duly authenticated indictment charging the crime of obtaining goods by false pretences.<sup>2</sup> It was shown that the prisoner was not in Pennsylvania at the time the false pretences were alleged to have been committed, and had not been there since; and that the goods were obtained by purchase from an agent of the prosecutor in the State of New York, to whom the false representations, if any, were made. It was held that as the prisoner had not, either at or after the commission of the crime, been in the State of Pennsylvania, he was not a fugitive from its justice, and was entitled to be discharged. In the *State of Tennessee v. Jackson*,<sup>3</sup> the defendant, Jackson, who resided in Chicago, in the State of Illinois, advertised a horse for sale. A resident of Chattanooga, in the State of Tennessee, seeing the advertisement, entered into a correspondence with Jackson, and in the end purchased the horse, which was duly shipped to Chattanooga, and remitted the purchase-money to Jackson by mail. When the purchaser tried the horse, he pronounced him worthless, and alleged that the money paid for him had been obtained by false and fraudulent pretences, on which charge a warrant for Jackson's arrest was obtained from a justice of the peace in Chattanooga. The matter was then placed in the hands of a detective, who made an affidavit before a magistrate in Tennessee charging that Jackson had committed the crime of obtaining money by false pretences against the laws of Tennessee, and that he had fled from that State and taken refuge in Illinois. On this affidavit the governor of Tennessee made a requisition upon the governor of

<sup>1</sup> *Wilcox v. Nolze*, 34 Ohio St. 520.

<sup>2</sup> *In re Mohr*, 73 Ala. 503. See also 12 Wash. L. R. 209; 18 Cent. L. J.

<sup>3</sup> 36 Fed. Rep. 258; 1888.

Illinois, and, with these papers, the detective obtained from the latter a warrant of surrender, on which he took Jackson and hurried him off to Tennessee, where he had him examined before a justice of the peace and committed to jail. Judge Key, of the United States district court, Eastern District of Tennessee, discharged the prisoner on *habeas corpus*, on the ground that Jackson, not having been in Tennessee, had never fled from it. Judge Key said that the oath of the detective was false and the governors of two States had been imposed on. He pronounced the whole proceeding to be a fraud upon the law, and ordered the prisoner to be discharged.<sup>1</sup> On August 25, 1890, a question as to flight in respect to the offence of obtaining money by false pretences was decided by Judge Bradley, of the supreme court of the District of Columbia, in the case of one Robert B. Bulliss, who was arrested for rendition on a warrant issued by the chief justice of that court, acting as chief executive of the District, in compliance with a requisition of the governor of Utah. Bulliss applied to Judge Bradley for a writ of *habeas corpus* and asked to be discharged from the custody of the agent of Utah, on the ground that he was improperly and illegally held, and that there was a conspiracy between the agent and certain persons in that Territory to obtain possession of him for malicious

<sup>1</sup> In *In re Miles*, 52 Vt. 609 (1880), the relator, who had been brought from New York to Vermont, alleged that when he was arrested in New York on a warrant issued by the governor of that State in compliance with a requisition of the governor of Vermont, he applied to a judge of the city of New York for discharge on a writ of *habeas corpus*. The judge having refused to discharge him, proceedings by *certiorari* were brought before another court for a revision of that decision, and an order of stay was made upon the sheriff. This order was discharged by still another judge while the *certiorari* proceedings were yet pending, and Miles was delivered up to the agent of Vermont and taken to that State, where he was arrested on an indictment there pending against him. He alleged that the discharge of the order of stay was procured by fraud, and on this ground asked for his discharge on *habeas corpus* by the Vermont court. A copy of the record of the proceedings showing the discharge of the order being produced and the rendition proceedings appearing to be regular, the supreme court of Vermont held that the relator could not set up the manner by which he was brought into New York, and also that the validity of the record of the New York court showing the discharge of the order of stay could not be impeached or countervailed on *habeas corpus* by evidence *aliunde* the record.



purposes. Judge Bradley said that he should first determine whether the papers sufficiently showed that a crime had been committed in Utah; secondly, whether Bulliss was a fugitive; and, thirdly, whether the process had been abused,—whether it was used for an unlawful or a malicious purpose. Accompanying the requisition were two affidavits, and in this relation Judge Bradley said that where an affidavit was used it justified a stricter examination than where the charge was made by an indictment. One of the affidavits did not substantially charge an offence in Utah. In the other it was charged that the false representations were made on divers days from the 1st to the 29th of September, 1889, and that the money was paid to Bulliss on the 19th. It appeared also that he left Utah on the 16th or 17th, and the affidavit did not precisely state what the pretences were that induced the payment of the money, or when they were made. There was thus repugnance in the affidavit in alleging false pretences on the 29th of September in respect to money obtained on the 19th, and also defectiveness in the allegation of the commission of the offence in Utah. Judge Bradley said that the allegations did not show that Bulliss was in Utah at the commission of the offence, in any other than a constructive sense, and if he was not, he could not be called a fugitive from justice.<sup>1</sup> It also appeared that the money was actually received by Bulliss in the District of Columbia, whither it was sent to him by mail from Utah, after his departure from that Territory; and in this relation Judge Bradley is reported to have said that the completed offence was not committed by the relator in Utah so as to constitute him a fugitive from her justice, the false pretences having been made there, but the money having been received when he was elsewhere. Whether or no the report is accurate, we desire to suggest a different view from that stated. “Where,” says Wharton, “a false pretence is uttered in A., and the money obtained in B., the venue may be laid either in A. or B. This, in England, is finally settled by statute, which, however, is in this respect affirmatory of the common law. In several instances it has been held that the forum that first

<sup>1</sup> The Evening Star (Washington), August 25, 1890.



takes cognizance of the offence, whether it be the forum of the uttering of the pretence, or that of the forwarding of the goods, attaches to itself jurisdiction.”<sup>1</sup> This rule does not apply to false pretences only, but obtains in regard to various other crimes to the commission of which several facts, which may occur at different times and places, are essential. In such a case it may be held that a man may be regarded as a fugitive from the justice of the State where, being corporeally present, he commits any of the criminal acts that respectively give jurisdiction to punish the offence. Thus where a man is stricken in one State and dies in another, we should not suppose it to be doubtful that the person who committed the injury could be demanded as a fugitive from justice on a charge of murder by the State in which the mortal wound was inflicted; or if, upon the theory that, the injury being a continuously operative cause, the victim is murdered wherever he dies, the courts of the State where the death occurs should take jurisdiction of the offence, we should suppose that the culprit might, by his presence in and departure from that State, become a fugitive from its justice and be demanded as such on a charge of murder.<sup>2</sup> As the law does not separate

<sup>1</sup> Wharton's *Crim. L.* § 1206. In a note to the passage above quoted, the learned author says: “See this ruled as to the forum in which the pretences were uttered in *Skiff v. People*, 2 Parker C. R. 139; *R. v. Cooke*, 1 F. & F. 64; *R. v. Leech*, 36 Eng. L. & Eq. 539; *Dears. C. C.* 642; 7 Cox C. C. 100; and as to the forum in which the money was obtained in *R. v. Jones*, 1 Den. C. C. 551; 4 Cox C. C. 198; where the county in which the money was mailed to the defendant, living in another county, was said to have jurisdiction. In *R. v. Garret*, 22 Eng. L. & Eq. 607; 6 Cox C. C. 260; *Dears. C. C.* 232; *People v. Adams*, 3 Denio, 190; 1 Comst. 178; *Com. v. Van Tuyl*, 1 Metc. (Ky.) 1, it was held that the place of the receipt of the property has jurisdiction, although the pretence on which the money was obtained was uttered in another State.”

In *Norris v. State*, 25 Ohio St. 217, it was held that the place where goods were delivered to a carrier had jurisdiction.

<sup>2</sup> See Report on Extraterritorial Crime, pp. 30-34, 78, by author of the present work; Government Printing Office, 1887. Wharton's *Crim. L.*, § 292; Bishop's *Crim. L.*, vol. i. § 113; *Riley v. State*, 9 Humph. (Tenn.) 646; *State v. Kelly*, 76 Maine, 331; *State v. Carter*, 3 Dutcher, 499. A well-known authority for the position that the murder is committed where the injury is inflicted, though the victim die elsewhere, is the case of Guiteau, the assassin of President Garfield. The jurisdictional difficulties which existed in the old English law on this subject

the elements so as to destroy jurisdiction of the offence, we should not divide them so as to defeat the recovery of jurisdiction over the offender.

§ 585. *Case of Juhn.* — The question of fleeing from justice was discussed before the governor of Maryland in July and August, 1890, in the case of Max Juhn, a merchant of the city of Baltimore, in that State, whose surrender was demanded by the governor of New York on a charge of obtaining goods by false pretences. Accompanying the requisition was a copy of an indictment in which it was charged that on the 14th of January, 1890, Juhn presented to the firm of H. B. Claflin & Co., of the city of New York, a false statement as to his financial standing whereby he obtained goods for which it turned out that he was unable to pay, owing to the fact that he was at the time insolvent. The case was argued before the governor of Maryland twice; first in July, on the prisoner's application for the revocation of a warrant of arrest which was issued in compliance with the requisition. This application having been granted, the case again came before the governor in August, on a new application of the State of New York for the fugitive's arrest and rendition. In behalf of Juhn it was alleged that he was not in New York on the 14th of January, when the false statement was said to have been personally delivered by him, and cheques were produced which appeared to have been signed by him in Baltimore on January 7, 8, 10, 11, 13, 14, 16, 17, and 18. It was also shown that the goods were not delivered to a carrier for shipment to Juhn until January 16, one of the days when there was proof that he was in Baltimore. It was contended by his counsel that, that being the date of the obtaining of the goods, the offence could not have been committed until that day, when the accused was not in New York, and it was argued upon that ground also he could not be demanded as a fugitive from justice.<sup>1</sup> After the hearing of the application for the revocation of the warrant of arrest, the governor submitted the case to merely grow out of the fact that the grand juries were supposed to know what passed in their own county, and nothing else.

<sup>1</sup> *Baltimore Sun*, Aug. 30, 1890.

the attorney-general, who, on the 29th of July, gave an extended opinion, in which he said :—

The person must have been in the State of New York when the crime here charged was committed, and must have fled into this State, to justify his extradition. The indictment charges Juhn with making a written false statement of the condition of his firm, and exhibiting and delivering the same to H. B. Claflin & Co. in New York on the 14th day of January, 1890, and obtaining their property on the faith of that false representation. It will be observed that the indictment charges that the offence was committed by Max Juhn, in New York, on the 14th January, 1890. The affidavit of Leo Frank, the collector and adjuster for H. B. Claflin & Co. (found among the requisition papers), declares that Max Juhn, on the 14th of January, 1890, committed the offence charged in the city of New York, and was “actually in the State of New York” at that time, and on that day personally delivered to the said firm the paper writing containing the false representation. In this inquiry it is essential that a definite time shall be fixed, at which time the presence of the accused is alleged to have been in the demanding State, when and where he committed the crime. Where the time becomes material, either as constituting an element of the crime, or as affording the accused a bar to the proceeding, it must be accurately stated. *State v. Robinson*, 29 N. H. 274 ; *State v. Caverly*, 51 Ib. 446. Here the time when the offence was committed in New York is positively stated as January 14, 1890. The proofs presented by the accused at the investigation before me, on the 25th inst., prove conclusively to my mind that Max Juhn was not in the city of New York on the 14th of January, 1890, but was in the city of Baltimore, conducting his business in the ordinary way. The affidavits, checks, and other papers relating to this matter are submitted for your consideration. It was set up at the examination that there was an error in the date charged in the indictment, and that the paper writing was delivered in New York on the 15th of January, 1890, and the original paper writing was produced, and on its face is now written, “Handed writer by Max Juhn, January 15, '90 ;” but it is remarkable that the “writer” in his affidavit filed at the examination only says that it was handed to him “on or about the 15th January, 1890.” I cannot satisfy myself that these words were written at the time named, for I will not do the district attorney of New York the injustice to suppose that he

would charge in an indictment the commission of an offence at a time one day earlier than the day named on the face of the paper writing constituting the false representation, as the actual date on which the false representation was made. He could not have charged a person with committing a crime on the 14th, when, the face of his criminating evidence, it was plainly shown that the crime could not have been committed before the 15th. Besides this, an inspection of the copy of the same paper, set out in the body of the indictment, does not disclose any such words written on the paper writing at the time of the finding of the indictment. It is also worthy of note that although the offence is charged to have been committed on the 14th of January, 1890, the proof shows that the goods were not delivered in New York until the 16th. The evidence proves that Max Juhn was not in New York on the 14th January, 1890, and did not personally deliver to Clafin & Co. the paper writing referred to on that day in that State, and did not flee from that State after the commission of the crime, and consequently, upon the proofs now before you, in my opinion he ought not to be extradited as a fugitive from justice.

Respectfully submitted,

WM. PINKNEY WHYTE,  
*Attorney-General.*<sup>1</sup>

It will be observed that while reference is made in the opinion of the attorney-general to the fact that the goods were not delivered in New York until January 16, that fact is not emphasized, and it is insisted upon that Juhn was not a fugitive from justice because he was not in New York on the day on which the false statement was averred to have been personally made by him, which was the date of the offence as laid in the indictment.

When the renewed application was made for Juhn's surrender, a new indictment was furnished, in which the false statement was alleged to have been presented and the offence to have been committed on the 15th of January. How far the effect of this was considered does not appear; for, at the conclusion of the hearing, in which it was strongly insisted that

<sup>1</sup> Baltimore Daily News, July 30, 1890.

the application for surrender was made for the collection of a debt and not for the promotion of criminal justice, the governor is reported to have announced his decision in the following terms: "I am satisfied in my mind about the matter, and under all the circumstances, I decline to surrender this man."<sup>1</sup>

§ 586. *Provision in Laws of Indiana.* — By an act of the legislature of Indiana of March 9, 1867, provision was made against the recognition of the theory of constructive presence. This provision is now embodied in the Revised Statutes of the State as follows: —

"No citizen or resident of this State shall be surrendered under pretence of being a fugitive from justice from any other State or Territory, where it shall be clearly made to appear to the judge holding the examination provided for by the second section of this act, that such citizen or inhabitant was in this State at the time of the alleged commission of the offence, and not in the State or Territory from which he is pretended to have fled, and in such case the judge holding the examination shall discharge the person arrested, and forthwith report the facts to the governor."

The constitutionality of this act was maintained and its provisions applied by the supreme court of Indiana in 1878, in *Hartman v. Aveline*,<sup>2</sup> it being shown that Aveline, who was in custody on a warrant of the governor of Indiana, issued in compliance with the requisition of the governor of Illinois, charging him with obtaining goods in the latter State by false pretences in writing, had resided in Indiana for eight or ten years, and had not been in Illinois for a long period, antedating and including the time of the alleged offence. It appears that Governor Robinson, of New York, declined to surrender one Baldwin, charged with conspiracy to defraud in New Jersey, on the ground that he was not in New Jersey, but

<sup>1</sup> Baltimore Sun, Aug. 30, 1890. The decision was announced on the preceding day.

<sup>2</sup> 63 Ind. 344. It may be observed that the statute only refers to a "citizen or resident," or a "citizen or inhabitant," of the State, who was in the State of Indiana, and not in the demanding State, at the time of the commission of the offence in the latter.

in New York, at the time the offence was alleged to have been committed, and therefore could not have fled from New Jersey, nor be stopping in New York as a fugitive from justice.<sup>1</sup>

§ 587. **Tennessee Case.** — In 1876, the governor of Massachusetts demanded of the governor of Tennessee the surrender of two brothers named Dickerson, charged with obtaining money by false pretences in Boston. A warrant for their arrest and delivery up having been issued, they applied through their counsel, Colonel Patterson, of Memphis, to Governor Porter, of Tennessee, for its revocation. Accompanying the requisition of the governor of Massachusetts was an indictment in which it was charged that the Dickersons obtained money in Boston by means of certain fraudulent bills of lading, falsely representing cotton to have been shipped on a steamer at Memphis. The money was alleged to have been obtained in Boston on the day on which the bills of lading were made out and signed at Memphis. There was also an affidavit of the prosecutor in Boston that the Dickersons were fugitives from the justice of that State, but it was inconclusive in its statements. On the other hand, counsel for the prisoners filed numerous affidavits showing that the alleged fugitives were not in Massachusetts, but in Tennessee, at the time of the commission of the alleged crime. Governor Porter, on December 23, 1876, accordingly revoked his warrant on the ground that the prisoners were not fugitives from justice.<sup>2</sup>

§ 588. **Coming of Offender within demanding State after commission of Crime.** — In the foregoing cases relating to fugitives by construction, it is to be observed that an allegation is often made that the person charged was not in the demanding State at the date of the alleged offence *and has*

<sup>1</sup> H. D. Hyde, 3d Annual Meeting Am. Bar Asso. (1880), p. 190.

<sup>2</sup> I am indebted to Governor Porter for a reference to the above case as well as for the excellent brief of Colonel Patterson in manuscript. The Interstate Extradition Conference held in New York City in August, 1887, refused to adopt a recommendation to the governors of the various States and Territories that no demand be complied with where the fleeing was constructive, on the ground that the decisions of the courts already covered the case.

*not been there since.* This allegation is intended to meet the view taken by the court in the Matter of Adams,<sup>1</sup> in 1844. Adams, a resident of Ohio, was indicted in the city of New York for obtaining goods by false pretences. On that charge he was suddenly delivered up from Ohio, without an opportunity to apply for a writ of *habeas corpus*. After his arrival in the city of New York, he obtained such a writ from Judge Vanderpool of the superior court of that city, and applied for discharge on the ground that he was not a fugitive from justice, not having been in New York when the offence was alleged to have been committed. It appeared, however, on the hearing, that some time after the date of the alleged offence Adams came to New York City on a bridal excursion. While there he made an engagement with a member of the firm which he was alleged to have defrauded, but suddenly left town without keeping it. The member in question stated that his firm was at the time taking steps to have Adams arrested. On these facts Judge Vanderpool held that Adams was a fugitive from justice, without going into the question whether the court could go behind the action of the executives of the two States in the matter.

We are free to admit that we do not perceive any great flaw in the reasoning of the court, restricting it, as it was restricted by the facts in the particular case, to offences to the commission of which corporeal presence is generally recognized as not essential. The form in which the question of constructive flight has most frequently been raised has been the allegation on the one side and the denial on the other that the person charged was in the demanding State at the time of the commission of the alleged offence, and upon these facts the decision of the court is naturally confined to the statement that the offender must, in order to be a fugitive from justice, have been in the demanding State at that time. Such were the circumstances in *Ex parte Reggel*,<sup>2</sup> which is cited in the case of Juhn;<sup>3</sup> and the Supreme Court said the appellant "was entitled, under the act of Congress, to insist

<sup>1</sup> 7 L. Rep. 386.

<sup>2</sup> 114 U. S. 642.

<sup>3</sup> *Supra*, § 577.



upon proof that he was in the demanding State at the time he is alleged to have committed the crime charged, and subsequently withdrew from her jurisdiction, so that he could not be reached by her criminal process." In another place, however, the court said that upon the theory that the mere requisition, with a copy of an indictment found, or an affidavit charging the offence, was conclusive as to the fleeing from justice, the governor of the State in which the person charged was found would be compelled to deliver him up, although there was "incontestable proof" that he had "in fact never been in the demanding State, and, therefore, could not be said to have fled from its justice." The court, therefore, cannot be said to have decided that a person cannot be a fugitive from justice unless he was actually in the demanding State at the moment of the commission of the offence.<sup>1</sup>

§ 589. **Proof of Flight.** — In *In re Jackson*, which involved

<sup>1</sup> The subject of the commission of offences in a particular place by persons corporeally elsewhere is treated by the writer at great length in his "Report on Extraterritorial Crime," Government Printing Office, 1887 ; reprinted in *Foreign Relations of the United States*, 1887. The writer takes the liberty of quoting from that work the following passage : —

"The principle that a man who outside of a country wilfully puts in motion a force to take effect in it is answerable at the place where the evil is done, is recognized in the criminal jurisprudence of all countries. And the methods which modern invention has furnished for the performance of criminal acts in that manner has made this principle one of constantly growing importance and of increasing frequency of application.

"Its logical soundness and necessity received early recognition in the common law. Thus it was held that a man who erected a nuisance in one county which took effect in another, was criminally liable in the county in which the injury was done. *Bulwer's case*, 7 Co., 2 b., 3 b. ; *Com. Dig. Action, N. 3, 11*. So, if a man, being in one place, circulates a libel in another, he is answerable at the latter place. *Seven Bishops' Case*, 12 State Trials, p. 331 ; *Rex v. Johnson*, 7 East, 65. The same rule applies to obtaining money or goods by false pretences ; but it must appear that the false pretences were actually made at the place where the prisoner is held, and not merely that the pretences, which were made elsewhere, resulted in defrauding some one at the place of trial. *Reg. v. Garrett*, 6 Cox C. C. 260. So, if persons outside of a country procure therein the making and engraving of a plate for purposes of forgery, they are indictable there. *Queen v. Bull & Schmidt*, 1 Cox C. C. 281. Likewise for cheating by false papers. *King v. Brisac & Scott*, 4 East, 164. The same principle obtains in the United States."

Following this passage, the cases in the United States are fully discussed.



the question of actual presence in the demanding State, the court said: "The evidence that the person has fled from justice must not only be satisfactory to the governor, but must be legally sufficient, before the executive authority can be exercised. He cannot act upon rumor, nor upon the mere representation of a person, nor upon the demanding governor's certificate. It should be sworn evidence, such as will authorize a warrant of arrest in any other case."<sup>1</sup> The statutes of Delaware, Iowa, Michigan (the State in which Jackson's case was decided), Massachusetts, and Ohio, require "sworn evidence" that the person charged is a fugitive from justice. This means that there must be at least a distinct allegation under oath that the person charged is such a fugitive. It is supposed that such an allegation in the affidavit accompanying the requisition would meet the requirements of the law, and, if properly stated and not overborne by other evidence, would be held to be sufficient. But it is the practice to furnish a separate affidavit or affidavits as to the fleeing from justice.<sup>2</sup> Such affidavits, not being within the act of 1793, are not required to be certified as authentic by the demanding executive.<sup>3</sup> In *Ex parte Sheldon*,<sup>4</sup> before the supreme court of Ohio, it was objected that there was no evidence before the governor, or before the judge before whom, under the statute of that State, the fugitive was brought after his arrest on the warrant of the governor, to show that Sheldon was a fugitive from justice, or that he had fled from Missouri, where the crime was charged to have been committed, in order to avoid prosecution. One of the papers annexed to the requisition was the affidavit of the prosecuting attorney of Jackson county, Missouri, which was authenticated by the attestation of the clerk of the court in which the indictment was found, and also by that of the secretary of the State of Missouri; in which, after stating the finding of the indictment for embezzlement against Sheldon, affiant said, "That said Sheldon is a fugitive from justice

<sup>1</sup> 2 Flippin, 183.

<sup>2</sup> H. D. Hyde, Report of Am. Bar Asso. (1880), p. 190.

<sup>3</sup> *Ex parte Swearingen*, 13 S. C. 74.

<sup>4</sup> 34 Ohio St. 319.

from the said State of Missouri, and he has reason to believe, and does believe, that the said Sheldon is now in the city of Columbus in the State of Ohio." On this the supreme court of Ohio said: "While this does not in terms state that Sheldon had fled to avoid prosecution, it does state as a conclusion that he is a fugitive from justice; and it was for the executive to put a construction upon this language before issuing the extradition warrant; and under these circumstances the fugitive will not be discharged on the ground that there was no evidence before the executive issuing the warrant, showing that the fugitive had fled from the demanding State to avoid prosecution."<sup>1</sup> In the Matter of Manchester,<sup>2</sup> before the supreme court of California, it was contended that the affidavit did not sufficiently charge that the prisoner was a fugitive from justice. Murray, C. J., said: "I think that the allegation that he committed the crime and then secretly fled, is sufficient from which to deduce the conclusion."<sup>3</sup>

§ 590. Construction of Act of 1793 as to Proof of Flight. — The act of Congress refers to the person to be surrendered as a fugitive from justice. But it says that when he shall be demanded as such, and the copy of an indictment found, or an affidavit made before a magistrate charging the offence shall be produced, duly certified, it shall be the duty of the executive upon whom the demand is made, to deliver him up. It was held by the supreme court of South Carolina in *Ex parte Swearingen*,<sup>4</sup> in 1880, that, under the act of Congress, an affidavit that the person charged was a fugitive from justice was unnecessary. The court observed that such an affidavit was one of the things in the absence of which Mr. Attorney-General Randolph, in his opinion upon the requisition of the governor of Pennsylvania upon the governor of Virginia, thought the requisition defective. But Congress, with this opinion before it, deliberately omitted such a provision from

<sup>1</sup> To same effect is *Ex parte Reggel*, 114 U. S. 642.

<sup>2</sup> 5 Cal. 237.

<sup>3</sup> See also *Ex parte Reggel*, 114 U. S. 642.

<sup>4</sup> 13 S. C. 74. The court said that if such an affidavit were required, it need not be certified as authentic by the demanding executive, since it was not within the act of Congress.

the act of 1793, "for the reason, perhaps," said the court, "that in most, if not all, cases that fact would sufficiently appear from the papers required by the act of 1793, and from the necessary course of proceedings in executing the provisions of the act." The court held that the fact so appeared from the papers before it. An affidavit accompanying the requisition showed, said the court, "that the petitioner committed the offence of riot in the State of Georgia, and this is sufficient to show that he was then in that State; and his appearance here, as well as his statements in his petition, shows that he was afterwards found in this State, and this in our judgment is quite sufficient to show that he is a fugitive from justice in the sense of those terms as used in the Constitution." In his petition the prisoner said that he was not, and never had been, a fugitive from the justice of the State of Georgia, which, said the court, was not a denial that he was in that State when the offence was committed, but merely a denial of a conclusion of law. The court moreover questioned the right of the prisoner to allege an *alibi* on a writ of *habeas corpus*. Willard, C. J., dissented, on the ground that the demandant State must allege the facts upon which the right of demand depends; that it must show that the person demanded is a fugitive from justice; that the requisition in the present case only stated that it had been represented to the governor of the demandant State that the person was a fugitive from justice; and there was no other proof. He thought the proceeding was in derogation of the rights of the relator under the law. Similar views to those held by the court in the case of *Ex parte Swearingen* were expressed by Judge Choate in the United States district court for the Southern District of New York, in Leary's case, in 1879.<sup>1</sup> Without deciding the question whether the court could on *habeas corpus* go behind the warrant of surrender of the governor of New York and examine the grounds on which he acted, Judge Choate said that where it appeared by the recitals in the warrant that the governor had before him a duly

<sup>1</sup> 10 Benedict, 197.

authenticated copy of an indictment charging an offence, the commission of which necessarily implied the presence of the accused at the time and place alleged, and there was no evidence tending to show that the accused was not a fugitive, he was properly held under the warrant. Such appears to be the reason of the case and the purport of the act of 1793, although the practice may be otherwise. As heretofore observed,<sup>1</sup> by the common law, which the framers of the Constitution and the act of 1793 had in mind, crimes are essentially local. To charge a person with the commission of a crime in one of the United States is in general to charge him by necessary implication with being present at the time and place of the alleged offence. If the crime charged is not of such a character as to require the presence of the accused at its perpetration, and the indictment or the affidavit is not clear, or raises a doubt on the subject, specific evidence of actual presence may reasonably be required. But even here, in view of the general presumption under the law, it would be proper to leave it to the accused to set up that he is not a fugitive from justice, in answer to the allegation of the demanding governor that he is so. Such was the ruling of the supreme court of Texas, in *Hibler v. The State*, in 1875. Hibler was arrested for surrender on a warrant issued by the governor of Texas, upon a requisition of the governor of Mississippi, without any specific and separate proof as to flight, demanding him as a fugitive from justice. Hibler, in a petition for a writ of *habeas corpus*, denied that he was a fugitive from justice (the same form of denial as in the case of *Swearingen*), and alleged that no evidence that he was such a fugitive was furnished to the governor of Texas as a foundation for his warrant. The court said: "The requisition of the governor of the State of Mississippi would authorize the governor of this State (Texas) to act in reference to that subject under the Constitution and laws. If the applicant was not really a fugitive from justice, as thus understood, and should undertake to set that up as a ground of relief upon *habeas corpus*, it

<sup>1</sup> *Supra*, § 570.

could not be done by a mere denial, but by the statement of such facts as would show that the presumption upon which the governor had acted was unfounded in fact, and that thereby this process was being perverted to his injury.”<sup>1</sup>

That the demand for surrender, accompanied with the evidence prescribed by the act of 1793, raises under that act at least a *prima facie* presumption that the person charged is a fugitive from justice, would seem to be a tenable conclusion.<sup>2</sup> In opposition to this view, there has been cited on several recent occasions the language of Mr. Justice Harlan, delivering the opinion of the supreme court in *Ex parte Reggel*,<sup>3</sup> in which the learned justice says: —

“ Undoubtedly, the act of Congress did not impose upon the executive authority of the Territory<sup>4</sup> the duty of surrendering the appellant, unless it was made to appear in some proper way that he was a fugitive from justice. In other words, the appellant was entitled, under the act of Congress, to insist upon proof that he was within the demanding State at the time he is alleged to have committed the crime charged, and subsequently withdrew from her jurisdiction, so that he could not be reached by her criminal process. The statute, it is to be observed, does not prescribe the character of such proof; but that the executive authority of the Territory was not required by the act of Congress to cause the arrest of appellant, and his delivery to the agent appointed by the governor of Pennsylvania, without proof of the fact that he was a fugitive from justice, is, in our judgment, clear from the language of that act.”

While these statements may be capable of a broad interpretation, we do not think that they constitute a decision that the executive authority upon whom the demand is made may be required or would be altogether warranted by the act of 1793, in exacting specific proof of flight, in the absence of any competent allegation that the person charged is not in reality a fugitive from justice. Immediately after the passage above quoted, the learned justice furnishes for the position taken by him the following reason: —

<sup>1</sup> 43 Tex. 197.

<sup>2</sup> 114 U. S. 642, 651.

<sup>3</sup> *Supra*, 578.

<sup>4</sup> Utah.

“Any other interpretation would lead to the conclusion that the mere requisition by the executive of the demanding State, accompanied by the copy of an indictment, or an affidavit before a magistrate, certified by him to be authentic, charging the accused with crime committed within her limits, imposed upon the executive of the State or Territory where the accused is found, the duty of surrendering him, although he may be satisfied, from incontestable proof, that the accused had, in fact, never been in the demanding State, and therefore could not be said to have fled from justice.”

This reasoning seems to be strictly applicable in answer to the contention that the demand for surrender, accompanied with either of the documents specified in the act of Congress, is conclusive upon the question of flight, but it seems to be legitimate to maintain that the demand, so supported, raises a presumption on that subject, without holding that such presumption is conclusive. It is believed that there is no case in which it has been judicially decided that the action of the governor of a State, in ordering the delivery up of a fugitive upon a demand accompanied with the evidence specified in the act of 1793, was unlawful under that statute, because specific proof of flight was not presented. If such be the law, it must be conceded that the legislation of Congress as to the evidence to accompany the demand, was strangely defective. When, therefore, it is declared in general language that the person charged under the act of 1793 is “entitled to insist upon proof that he was within the demanding State at the time he is alleged to have committed the crime charged,” it is not unreasonable to assume that that insistence must have some other basis than the mere absence of specific proof of flight; and this assumption, as well as the theory upon which it is founded, is entirely compatible with the right and duty of the governor to give due effect to the “incontestable proof that the accused had, in fact, never been in the demanding State.”

In reality, this question of the naked right of the person charged to insist upon specific proof that he is a fugitive from justice, was not decided by the court. Accompanying the warrant of the governor of Utah, on which the appellant was

held, there was in fact an affidavit as to flight. This affidavit, the court said, while not altogether satisfactory, was sufficient to sustain the action of the governor on *habeas corpus*, "especially as no opposing evidence was brought to his attention;" and the judgment of the court below, remanding the prisoner into custody, was affirmed. The point, therefore, actually determined was not that specific evidence as to flight was necessary.

It is believed that where specific proof of flight is furnished, it is often of an exceedingly formal character. An illustration of this fact may be found in the case of Reggel, in which the affidavit as to flight, which was made before the clerk of the court of quarter sessions in the city of Philadelphia, Pennsylvania, was as follows: —

"Frederick Gentner, being duly sworn according to law, deposes and says: The grand jury of the March Sessions of the city and county of Philadelphia found a true bill of indictment against Louis Reggel, charging him with the crime of false pretences, and that the said Louis Reggel is a fugitive from justice, and now in Salt Lake City, Utah Territory."

Considered as evidence that Reggel was in the State of Pennsylvania at the time of the commission of the alleged offence, this affidavit was certainly very meagre and defective. So far as it related to the finding of an indictment, it was quite superfluous and irrelevant, since the copy of that instrument, duly certified by the demanding executive as authentic, accompanying the requisition, was, upon all the authorities, conclusive evidence on that point. The further allegation that Reggel was a fugitive from justice was rather evidence that he could not be found in Pennsylvania, than that he was in that State when he committed the crime charged; especially as the only fact distinctly stated to connect him with Pennsylvania was that he had been indicted there. It might have been cogently argued that, if the affiant had been able, he would have sworn that Reggel was in the State of Pennsylvania at the time the offence was alleged to have been committed, instead of merely stating that an indictment had been found.

It seems to us that if an affidavit as to flight is required for the purpose of protecting the person charged against a demand emanating from a State in which he had not been corporeally present, it should contain a distinct allegation that he had been so present.

It is thought that the views above expressed as to the construction of the act of 1793 as to proof of flight, and as to the scope of the decision in *Ex parte Reggel*, are confirmed by the observations of the Supreme Court in the later case of *Roberts v. Reilly*.<sup>1</sup> Referring in this case to the decision by the governor of the question of flight, the court said:—

“How far his decision may be reviewed judicially in proceedings in *habeas corpus*, or whether it is not conclusive, are questions not settled by harmonious judicial decisions, nor by an authoritative judgment of this court. It is conceded that the determination of the fact by the executive of the State in issuing his warrant of arrest, upon a demand made on that ground, whether the writ contains a recital of an express finding to that effect or not, must be regarded as sufficient to justify the removal until the presumption in its favor is overthrown by contrary proof. *Ex parte Reggel*, 114 U. S. 642. Further than that it is not necessary to go in the present case.”

<sup>1</sup> 116 U. S. 80, 95.



## CHAPTER V.

## ARREST.

1. *Under Common Law.*

§ 591. **Opinion of Chief Justice Tilghman.** — The act of Congress of 1793 made no provision for the arrest and detention of a fugitive from justice pending the reception of a requisition for his surrender. This deficiency is now generally supplied by State and Territorial statutes;<sup>1</sup> but prior to their enactment it was held by the highest judicial authority that such arrest and detention might be effected through the agency of the courts. In the case of the *Commonwealth v. Deacon*,<sup>2</sup> Chief Justice Tilghman referred to the practice of arresting and detaining offenders from one of the United States to another. In the case of *Simmons v. Commonwealth*,<sup>3</sup> before the supreme court of Pennsylvania, in 1813, the plaintiff in error was sentenced by the mayor's court of the city of Philadelphia for larceny, upon a special verdict of a jury that he stole the goods in Delaware and brought them into Pennsylvania. The supreme court, Tilghman, C. J., reversed the judgment; but, instead of discharging the prisoner, directed the prothonotary to communicate the facts to the governor of Delaware, and made an order for the prisoner's discharge in three weeks, unless in the mean time a demand should be made for his surrender.

<sup>1</sup> See Appendix II.

<sup>2</sup> 10 S. & R. 125. See in this relation *Rex v. Hutchinson*, 3 Keble, 785; *Rex v. Lundy*, 2 Ventris, 314; *Rex v. Kimberly*, 2 Stra. 848; *E. L. Co. v. Campbell*, 1 Ves. Sen. 246; *Mure v. Kaye*, 4 Taunt. 34.

<sup>3</sup> 5 Binney, 617. It is stated in Lewis's Criminal Law, p. 260, citing *Com. v. Fassit*, *Vaux's Cases*, 32, that a fugitive may be arrested in anticipation of a requisition, on a warrant issued by a magistrate upon a proper sworn charge affording good reason for believing that the party charged has committed a crime in another State. It is the duty of the magistrate to commit the accused till opportunity be afforded for taking the necessary steps for surrender.

§ 592. **Opinion in Delaware.** — In the *State v. Buzine*,<sup>1</sup> in 1846, Chief Justice Booth, of Delaware, stated the principle involved with great lucidity. He said that while the law might be considered as settled in the United States that the recovery and surrender of criminals in respect to foreign powers rested solely on treaty stipulations, yet “where separate States or Territories are part of the same empire, under one common sovereign or government, a person who commits a crime in one part and seeks shelter in another, may be arrested in the latter, and sent for trial where the offence was committed; or may be detained in prison for a reasonable time, to allow an application to be made to deliver him up to the proper authority, for the same purpose. This,” he continued, “is a principle of the common law, founded in the common welfare and safety of society.”

§ 593. **New York Cases.** — A case very like that of *Simmons v. Commonwealth*<sup>2</sup> is *People v. Schenck*,<sup>3</sup> before the supreme court of New York, in 1807. The defendant was indicted at a court of general sessions of the peace in the city of New York for stealing a gun. The jury found a special verdict that he stole the gun in the State of New Jersey, and afterwards brought it into the State of New York and offered it for sale. The proceedings were brought before the

<sup>1</sup> 4 Harr. 572, 574.

<sup>2</sup> *Supra*, § 583.

<sup>3</sup> 2 Johns. R. 478. In the case of *People v. Wright et al.*, 2 Caine, 212, before the supreme court of New York in 1804, the defendants were in custody of the sheriff on very heavy civil process, and while thus detained, a warrant was issued against them by one of the special justices for the city of New York, grounded on an authenticated copy of an indictment found against them in Massachusetts, for a fraud alleged to have been there committed. The district attorney on these facts moved to have them taken out of the custody of the sheriff and committed to Bridewell. “*Per curiam*. ‘We cannot do it. We have no jurisdiction over offences committed in other States. The Constitution points out a mode by which offenders, flying from one State into another, may be claimed. They must be demanded by the executive authority of the State from which they fled. The prisoners must be remanded.’”

“Motion denied.”

This view of the law (if correctly reported) did not prevail, and was set aside by the later cases in New York. In the *Matter of Fetter*, 3 Zab. 311, in 1852, Chief Justice Green, of New Jersey, referred to *People v. Wright* as not being law, and said it had been overruled.

supreme court by *certiorari*. That tribunal had just decided in *People v. Gardner*,<sup>1</sup> that a person could not be convicted of stealing a horse in New York where the original taking was in Vermont. It was accordingly held that Schenck could not be convicted of the offence with which he was charged. "But," said the court, "we think it proper to order, that he be detained in prison for three weeks ; and in the mean time, let notice be given to the executive of the State of New Jersey that the prisoner is detained on a charge of felony committed in that State ; and if no application be made for the delivery of the prisoner within that time, he must be discharged." Another most interesting case is that of Goodhue, — first before the recorder of New York City, and then before Chancellor Kent. Before the former it is reported as the *Matter of Goodhue*.<sup>2</sup> It first arose upon an application to the recorder for Goodhue's discharge on *habeas corpus*, in August, 1816. It was then found that he was committed on the following warrants: 1. A *mittimus* issued by a justice, on August 17, 1816, committing him on the ground that he was charged with obtaining money by false pretences in Kentucky. 2. A like *mittimus*, issued by another justice on August 21, 1816, for a like offence, committed in Kentucky. 3. A *mittimus* issued by a justice on August 14, stating that the defendant had been convicted before him as a disorderly person, and that he thereupon committed him to prison for sixty days. In addition to these warrants of commitment there was a deposition charging the relator with being a fugitive from the justice of the State of Kentucky. The recorder held that, so far as the commitment of the prisoner on conviction of being a disorderly person was concerned, he was entitled to bail, if under the circumstances of the case he ought to be bailed. But, he said, as it appeared by the oath of a witness that the relator had committed a public offence in Kentucky, and was a fugitive from the justice of that State, and as the Constitution of the United States required his arrest, a reasonable time should be given the executive of Kentucky to demand him ; and he remanded the prisoner for six weeks for

<sup>1</sup> 2 Johns. R. 477.<sup>2</sup> 1 Wheeler's C. C. 427.

that purpose. On October 8, 1816, the prisoner was brought on *habeas corpus* before Chancellor Kent, who held that the conviction as a disorderly person being *prima facie* legal and regular, he could not discharge the defendant on *habeas corpus*. He did not notice the first two writs. On October 14, 1816, the sentence for being disorderly having expired, the prisoner was again brought before the Chancellor. "The Chancellor observed that a reasonable time had been allowed to the party complaining to procure from the executive of Kentucky a demand of the prisoner, as a fugitive from justice, for the misdemeanor alleged to have been committed in that State; and as no such demand appeared, he ought not to be detained any longer."<sup>1</sup> In *Ex parte Smith*,<sup>2</sup> before the supreme court of New York in 1826, the relator was committed on the following warrant:—

Police office, city of Albany. The gaoler will receive, and safely keep for further examination, George W. Smith, who is charged with having been engaged in, or accessory to, a robbery of the United States mail, March 14, 1826.

J. O. COLE, *Justice of the Peace*.

On March 16, Smith was brought up on *habeas corpus*. The affidavit of the prisoner, on which the writ was allowed, stated that he understood the charge against him to be that of robbing the mail between Baltimore and Philadelphia; that he was not confined on any process, nor on the demand, of the executive of any State; nor upon any process from any of the United States courts. It was contended for the prisoner that he must be discharged, there being no demand of the executive of any State. Sutherland, J., said, that the governor of another State might know nothing of the arrest. A reasonable time must be allowed for giving him notice. Woodworth, J., said: "Detaining a prisoner by State authority, in order that he may be delivered over for prosecution to the United States, is by no means an unusual exercise of power. This court has repeatedly sanctioned such a proceeding; and in one case very lately." Yates, for the prisoner,

<sup>1</sup> *People v. Goodhue*, 2 Johns. Ch. 198.

<sup>2</sup> 5 Cowen, 1826

said this was a matter of discretion with the court; and they should require proof of the attorney-general that there was at least probable cause for the detention. Savage, C. J., said: "If there had been unreasonable delay, that would be a ground of discharge, unless probable cause could be shown. But a very short time has elapsed since the commitment; and we are clear that, for the present, the prisoner must be remanded for further examination." A rule was made accordingly.

§ 594. **Decisions in Georgia and South Carolina.** — In *State v. Howell*,<sup>1</sup> in 1821, and *State v. Loper*,<sup>2</sup> in 1812, the courts of Georgia maintained the duty of preliminary arrest and detention on common-law principles. In *State v. Anderson*,<sup>3</sup> before the court of appeals of South Carolina, in 1833, the defendant was convicted of murder for shooting and killing a person who was endeavoring, without a warrant, to arrest him for a murder committed in Georgia. No demand had been made by the governor of Georgia for his surrender; but it appeared that an indictment had been found against him in that State for a murder committed there, and that the governor of Georgia had issued a proclamation for his arrest; and that this was the information on which the person who endeavored to make the arrest was acting. The court held that it was sufficient to justify an arrest in South Carolina, by private persons, without warrant, to show that *prima facie* a felony had been committed in another State, and that the party arrested was the perpetrator; and that this might be done by proof of a voluntary homicide by the prisoner, and by the adduction of an indictment from the latter State charging him with murder, together with the finding of a "true bill," and by the proclamation of the governor of that State, offering a reward for his apprehension. The court said it was unnecessary, in order to prove the felony for the purposes of arrest for surrender, to produce a record of trial and conviction; for, if that were requisite, flight would be equivalent to acquittal.

<sup>1</sup> R. M. Charlton, 120.

<sup>2</sup> 2 Ga. Dec. 33.

<sup>3</sup> 1 Hill (S. C.), 327.

§ 595. **New Jersey and Alabama.** — In the Matter of Fetter,<sup>1</sup> before Green, C. J., of the supreme court of New Jersey, on *habeas corpus*, at chambers, in 1852, the relator was detained in custody as a fugitive from justice from the State of California, by virtue of a commitment, issued March 20, 1852, by William C. Howell, a justice of the peace for Mercer county, New Jersey. On the hearing of the application for the writ, it was developed, either by affidavit or by admission of counsel, that the prisoner was a citizen and resident of the State of Pennsylvania, carrying on business in New Jersey; that, upon a requisition of the governor of California, accompanied with a duly authenticated copy of an indictment of the relator for grand larceny in that State, the governor of Pennsylvania had issued a warrant for his arrest and surrender. Before the arrest could be effected in Pennsylvania the relator came into New Jersey, where he was arrested and committed, as above stated, "to await the requisition of the governor of California, or otherwise be thence delivered by due course of law." It was contended that the whole authority conferred by the Constitution in respect to the surrender of criminals was deducible from or consequent upon the demand for surrender, and that no such demand having been made upon the governor of New Jersey, the magistrates of that State had no jurisdiction to commit the prisoner. Chief Justice Green in an elaborate opinion sustained the commitment on the principles of the common law and the practice before and after the adoption of the Constitution. This case is cited in *Morrell v. Quarles*,<sup>2</sup> in 1860, in which the supreme court of Alabama maintained the regularity of the apprehension by a police officer of New Orleans of a person who had committed an assault with intent to murder in Alabama, and sought refuge in Louisiana. An offer of reward had been made for the apprehension of the fugitive, but no demand had at the time of the arrest been preferred for his surrender. A requisition cannot be used as a warrant of arrest.<sup>3</sup>

<sup>1</sup> 3 Zab. 311.

<sup>2</sup> 35 Ala. 544.

<sup>3</sup> Matter of Rutter, 7 Abb. Pr. (N. S.) 67.

## 2. *Under State Statutes.*

§ 596. **General existence of Statutes.** — Although it appears that upon common-law principles the preliminary arrest and detention of an offender for delivery up under the Constitution might be effected through the courts upon probable cause supported by oath or affirmation, yet the subject has now very generally been regulated by positive legislation. Some of the statutes are found to be merely declaratory of the common law; others are perhaps still more liberal; others yet are onerously restrictive of the common-law practice. In Alabama the statutes provide that the proceedings for the preliminary arrest and commitment of the fugitive shall be the same as for the arrest and commitment of a person charged with an offence in Alabama, except that an exemplified copy of an indictment or other judicial proceeding in the State or Territory in which the fugitive is charged “must be received as conclusive evidence before the magistrate.” With the substitution for the last clause of the provision that the indictment or other proceedings “may” or “shall” be “received as evidence” before the magistrate, substantially the same enactment is found in the statutes of Arizona, California, Idaho, Nevada, New Mexico, and Oregon. The statute of Colorado provides for the issuance by the magistrate of a preliminary warrant when the fugitive is charged with murder, rape, robbery, burglary, arson, larceny, forgery, and counterfeiting. Various provisions are found in the laws of other States and Territories, some requiring only “probable cause” for commitment, others evidence of guilt, and others “reasonable” cause to believe the complaint to be true. The law of North Carolina contains the exceptional provision that the judges may issue a warrant and commit the fugitive on satisfactory information laid before them that he has committed an offence punishable by the laws of the State where it was committed, either capitally or with imprisonment for a year or more in the State prison. The same provision is found in the statute of South Carolina.

§ 597. **Statutory Provisions must be observed.** — Where pre-



liminary arrest is regulated by statute, the law must be observed. Thus, in *Price v. Graham*,<sup>1</sup> before the supreme court of North Carolina in 1856, a warrant was issued by a justice of the peace for Henderson county for the arrest of — Graham, for the murder of a certain person “somewhere between this place and the State of Texas.” The court said that the warrant was void for two reasons. It was too vague and uncertain. And, in the second place, if it was intended to be a warrant to apprehend a fugitive from justice, it was void, since the statute of North Carolina, at the date of the issuance of the warrant, require it to be issued by two justices. This requirement was subsequently abolished. In *State v. Shelton et al.*,<sup>2</sup> the same court in 1878 sustained a conviction of assault and battery based on the arrest without warrant of a person charged with felony in another State, the laws of North Carolina containing an express statutory provision on the subject, which was not followed. In *Ex parte Cubreth*,<sup>3</sup> the supreme court of California in 1875 held that under the penal code of that State a warrant merely charging a person with being “a fugitive from justice,” and specifying no offence, was invalid; and discharged the relator, although it appeared that the warrant was issued by a justice of the peace on an affidavit which alleged that the relator stood charged in the Territory of Utah with the crime of forgery, committed in that Territory on the 10th of January, 1875, and that the charge was made on oath, by George F. Prescott, before J. Toohey, a magistrate in said Territory, and that he was a fugitive from justice found in the State of California. The article of the code on which the decision was rendered required that the proceedings for the arrest and commitment of a fugitive should be the same as for the arrest and commitment of a person charged with an offence against the laws of California. The warrant in question would doubtless have been held to be invalid, had there been no statute.<sup>4</sup> In the Matter of

<sup>1</sup> 3 Jones Law (N. C.) 546.

<sup>2</sup> 79 N. C. 605.

<sup>3</sup> 49 Cal. 435.

<sup>4</sup> Reading section 1550 of the penal code of California in connection with section 861, it would seem that where a person is arrested charged with the commis-



Leland,<sup>1</sup> before the superior court of the city of New York in 1869, it was held that a warrant of commitment was insufficient, which merely directed the warden of the city prison to "receive and safely keep for examination the body of Martin Leland, charged with forgery on oath of ——." The district attorney produced an affidavit of one Willits, who did not state where he resided or where he could be found, and who said that Leland came to No. 57 South Street, Philadelphia, and bought a city warrant of the city of Philadelphia, of the value of \$233.95. He further deposed, on information and belief, that two warrants, exact counterparts of the one so bought by Leland, each for a thousand dollars, were sold to brokers in Philadelphia, and that said warrants were forged. The court held that this affidavit was fatally defective in that it merely embodied a repetition of a rumor, and did not incorporate the charge pending against the prisoner in Pennsylvania.

§ 598. **Evidence for Commitment.** — The State and Territorial statutes generally exact more evidence for the commitment of a fugitive to await the reception of a demand for his surrender than they require for the issuance of the warrant for his arrest and examination prior to the decision of the question of commitment. This is in accordance with common-law principles. It is usually stated that both the issuance of a warrant of arrest in a criminal proceeding and the commitment of the accused for trial are based upon "probable cause." In one sense this is true. But, in the first case, the "probable cause" is the result of an *ex parte* statement; in the second, of an examination in the presence of the accused, with an opportunity for cross-examination and explanation. The statute of Virginia provides for the arrest of a person as a fugitive from justice upon a complaint on oath or other satisfactory evidence. When the alleged fugitive is arrested he is brought  
sion of a crime in another State, before a demand for his surrender is made, he is entitled to be discharged if, after his examination has commenced, it is postponed against his consent for a longer period than that mentioned in section 861. The court expressed this opinion without deciding the question.. *Ex parte Rosenblat*, 51 Cal. 885.

<sup>1</sup> 7 Abb. Pr. (N. S.) 64.

before a magistrate, who commits if "there is reasonable cause to believe that the complaint is true." In *Ex parte McKean*,<sup>1</sup> before Judge Hughes, in the United States district court for the Eastern District of Virginia, in 1878, the relator was arrested by the Richmond police on suspicion, based on a description in a detective newspaper, of being a fugitive forger from Kansas, and was committed by a police justice on the same evidence. Judge Hughes, in discharging the relator from arrest, said: —

"If the committing magistrate were merely holding this prisoner from day to day awaiting such testimony as the law requires, I should remand the prisoner to him and await his final action; because it is customary as an act of comity between States that, in such cases, a reasonable time shall be allowed for sending on the requisite proofs of the crime and of the charges from the State where the crime was committed. But it seems that the magistrate has taken final action in the matter, and exhausted the powers intrusted to him by the State law, so that the prisoner is before me on the validity of the *mittimus*, which is made part of the return of the jailer of Richmond to the writ of *habeas corpus*. The committing order of the magistrate does not set out in terms such facts as are required by law to give him authority to arrest and detain this prisoner. There is no demand from another State. There is no evidence that a crime has been committed. Nor is there evidence that this prisoner committed such a crime as the magistrate knew of only by hearsay. The prisoner must be discharged."

In the Matter of Rutter,<sup>2</sup> it was held that an affidavit embodying "a hearsay statement, communicated by telegraph," that a person was charged with crime in Tennessee, but not incorporating the charge, was insufficient to warrant his commitment, although he had been arrested and detained on it for several days.

§ 599. **Proof that Person is Charged.** — In order that the alleged fugitive may be arrested and held, many of the statutes require proof that he is charged with the offence in the State or Territory in which he is said to have committed it.

<sup>1</sup> 3 Hughes, 23.

<sup>2</sup> 7 Abb. Pr. (N. S.) 67.

In the common-law cases of *Simmons v. Commonwealth*, *State v. Buzine*, *People v. Schenck*, and *Ex parte Smith*,<sup>1</sup> it was not suggested that there was a criminal charge pending against the prisoners in the States from which they fled. On the contrary it was either held or implied that the pendency of such a charge was not necessary to authorize their detention. It is true that the Constitution and the act of Congress only require the surrender of persons who have been charged. But the arrest of a person as a fugitive from justice in order that proceedings may be taken for his surrender, is a very different thing from delivering him up as a fugitive from justice charged with crime in the State or Territory from which he fled. It would seem to be unnecessary, in principle, that a person, in order to be considered as a fugitive from justice, should have fled to escape prosecution on a charge formally made. If a man commits a murder a few feet from the State boundary and immediately retreats into another State, before a charge could possibly have been made against him, he is as much a fugitive from justice and from prosecution as if he had waited for a charge to be formulated and then escaped. The object of the preliminary arrest is to prevent the evasion of prosecution, by detaining the fugitive until the authorities of the State or Territory from which he fled may take the formal proceedings upon which to ask for his surrender. In such a case the legal probability that proceedings to vindicate the law will be taken by the authorities of the State in which the offence was committed, may, together with proper sworn evidence of the crime, be thought to be sufficient to authorize the arrest and detention. On the theory that to justify arrest a charge must actually have been made in the State where the offence was committed, a witness to the murder above supposed, instead of going in hot pursuit of the fugitive and having him arrested and detained, would be required to turn aside and repair to a magistrate in the State where the offence was committed and there make a formal charge, the fugitive meanwhile escaping. It has already been observed that the Constitution and the act of Congress only require the surren-

<sup>1</sup> *Supra*, §§ 583, 584, 585.

der of persons who have been duly charged. It may also be observed that they require an executive demand to be made before surrender. Yet this is not held to preclude the detention of a fugitive before any such demand is made; and to require a demand as a condition precedent to any action would entirely defeat the purpose of preliminary arrest and detention. It is true that the recent drift of legislation, and of judicial decisions as the result of legislation, has been to exact as the basis of arrest proof that the person whose capture is sought is charged in criminal proceedings in the State from which he fled. But this requirement may in one aspect be regarded as excessive and as out of accord with the object for which the statutes on the subject are enacted. In Dows' case, Chief Justice Gibson refused to permit a prisoner to set up in Pennsylvania, as a ground of discharge, his arrest without warrant by agents of that State in the State of Michigan, and urged as a persuasive argument for his decision that unless such extraterritorial arrests were "winked at," the constitutional provision, owing to the delays attending even the obtainment of warrants from judicial officers (which he said had been the practice in Pennsylvania respecting offenders from other States) would become inefficient.<sup>1</sup>

§ 600. **Decisions under Statutes.** — In the matter of Heyward,<sup>2</sup> before the superior court of the city of New York in 1848, under the New York act of 1839,<sup>3</sup> the relator Heyward was brought before Judge Sandford, at chambers, on a writ of *habeas corpus*. It appeared that he was committed by a police justice of New York City for examination, on an affidavit of one George P. Smith, that he was "a fugitive from justice from the State of Pennsylvania, where he stands charged on oath with felony, namely, with having, . . . by false and fraudulent pretences and representations, cheated and defrauded the firm of Hampton, Smith & Co., the said firm consisting of Wade Hampton and others. . . . The said Heyward being charged with felony in the said State of Pennsylvania as aforesaid upon the oath of Wade Hampton, and

<sup>1</sup> 18 Pa. St. 37.

<sup>2</sup> 1 Sandf. S. C. 701.

<sup>3</sup> Laws of 1839, ch. 350, p. 323.

certain other persons," &c. The court said that in order to give a magistrate jurisdiction to issue a warrant under the act it must appear: 1. That a crime had been committed in the foreign State; 2. That the accused had been charged in the foreign State with the commission of such crime; 3. That he had fled from justice and was found in the State of New York. The affidavit, said the court, was fatally defective in respect of the first and third requirements. It said that the defendant "stands charged" with a felony in Pennsylvania, but not that he committed it there. As to the third requirement, there was no allegation in the affidavit that was not perfectly consistent with the theory that the prisoner was in New York at the time the offence was alleged to have been committed. The prisoner was ordered to be discharged, and the court refused to detain him for examination *de novo*. In the matter of Leland,<sup>1</sup> before the same court in 1869, an attempt was made to remedy a defective warrant of commitment by an affidavit. The court held the affidavit also to be defective in that, being made by a person residing in the city of New York, it merely embodied a hearsay statement that the prisoner was charged with crime in Pennsylvania and was a fugitive from justice, and did not show, by an authenticated copy of the charge or indictment, or otherwise, that the prisoner was duly charged in Pennsylvania. The court refused to hold the prisoner to await further papers from that State. In the State *v.* Hufford,<sup>2</sup> before the supreme court of Iowa in 1869, it was set up as an answer in an action on a bail bond given in the case of an alleged fugitive from Illinois, that his arrest was illegal. It was held by the court to have been so, under the Iowa statute, which authorized the arrest of persons "found in this State charged with any crime committed in any other State or Territory," &c. The court said the charge must be shown to have been made to some court, magistrate, or officer, in the State in which the offence was committed, in the form of an indictment, information, or other accusation known to the laws of that State; and that the jurisdiction of such magistrate must be averred or proved in

<sup>1</sup> 7 Abb. Pr. (N. S.) 64.

<sup>2</sup> 28 Iowa, 391.

the proceedings for the arrest. It should be observed, in reference to the question how the charge must be made, or what constitutes a charge, that in the record before the court there was the deposition of a witness who testified that he was, at the time the alleged crime was committed, the coroner of Knox county, Illinois, and that he held an inquest upon the body of a woman named L. L. Strayer, then deceased. He stated the facts of the impanelling of the jury, the examination of witnesses as to the cause of the death of the woman, and that the jury rendered a verdict that death was caused by an abortion produced by the accused. He set out in his deposition a copy of the verdict. This deposition, with that of another witness, was suppressed, because, as the court below held, the evidence contained therein was irrelevant, immaterial and secondary. No objection was made to this ruling by the plaintiff. The supreme court said : —

“ We cannot determine the sufficiency of this evidence, nor could we, should it be held sufficient, consider it, as it was excluded by the court without objection. These depositions answer no useful purpose in the record, further than forming the basis of a supposition that evidence may exist, not used upon the trial, that the accused was, in Illinois, legally charged by the verdict of a coroner's jury with the offence for which he was arrested.”

It was held by the supreme court of Nebraska, in *Smith v. State*,<sup>1</sup> in 1887, that under section 330 of the criminal code of that State, it was necessary that the affidavit to procure the arrest of a fugitive in that State should allege that there was a charge pending against him before some court, magistrate, or officer of the State from which he fled, in the form of an indictment, complaint, or other accusation known to the laws of such State. It was not enough merely to say that he “ stands charged ” with the commission of a crime in such State. It has been held both in California and in Nevada, under the statutes of those States, that complaints were insufficient which contained no averment that the fugitive was charged in the State in which he was alleged to have committed the

<sup>1</sup> 21 Neb. 552.

offence.<sup>1</sup> It is not necessary that a warrant of arrest should have been issued in the demanding State.<sup>2</sup>

§ 601. **Bail.** — Nearly all the State and Territorial statutes provide for the taking of bail where the fugitive is arrested on the warrant of a magistrate before demand. The laws of Arizona, California, Colorado, Idaho, Nevada, New York, Oregon, Pennsylvania, and Texas simply provide that the magistrate may take bail. By the statutes of Connecticut, Delaware, Kansas, Maine, Minnesota, Mississippi, Missouri, and Rhode Island, the magistrate is authorized to take bail if the offence is bailable; the statutes of Illinois, South Carolina, Virginia, and West Virginia say, if the offence is bailable under the laws of those States. The statutes of Alabama, Massachusetts, New Hampshire, Washington, and Wisconsin provide that the fugitive shall be admitted to bail unless his offence is capital; the laws of New Mexico and Tennessee say, if capital where committed. The law of Iowa provides that bail shall be taken except in cases of murder;<sup>3</sup> of Maine, that bail shall be taken except in capital cases, or murder in the first degree. A person arrested on a rendition warrant is not entitled to bail.<sup>4</sup> In the case of Kilrain, who was arrested in the city of Baltimore, in the State of Maryland, on a warrant issued by the governor of that State, in compliance with a requisition of the governor of Mississippi for his surrender on a charge of prize-fighting in the latter State, the fugitive obtained a writ of *habeas corpus*. While this proceeding was pending before Judge Harlan, of Baltimore, the governor of Mississippi revoked the agency first given by him, and substituted, by a telegram to the governor of Maryland, the name of a new agent who had not arrived in Baltimore. On this ground, and pending a further hearing of the writ, Kilrain was admitted to bail. At the final hearing, the

<sup>1</sup> *Ex parte White*, 49 Cal. 433; *Ex parte Lorraine*, 16 Nev. 63.

<sup>2</sup> *Tullis v. Fleming*, 69 Ind. 15.

<sup>3</sup> It was held in *State v. Hufford*, 23 Iowa, 579, that this exception, construed in connection with the State constitution and with other parts of the statute, meant in capital cases, and that bail was properly taken on a charge of murder in the second degree, which was not capital.

<sup>4</sup> *Ex parte Erwin* (Texas), 21 Alb. L. J. 57.



new agent having arrived and received authority to take the prisoner away, Judge Harlan peremptorily refused an application of the prisoner to be admitted to bail for his appearance in Mississippi; and he was remanded into custody and conveyed to that State.<sup>1</sup>

### 3. *Wrongful Arrest.*

§ 602. **Criminal cannot set up.**—It is a general principle that a criminal is not permitted to set up as an answer to the charge against him, the manner in which he was brought

<sup>1</sup> I am indebted for information as to the case of Kilrain to Mr. John D. Lindsay, who has communicated to me a copy of a letter of Mr. Charles G. Kerr, State's attorney at Baltimore, of February 10, 1890, on the subject. I may add a letter of Mr. Lindsay of January 21, 1890, on another interesting and important case growing out of the Sullivan-Kilrain prize-fight. The letter is as follows :

"On Wednesday last, Jan. 15, 1890, William Muldoon, James Wakely, Mike Donovan, Mike Cleary, and William E. Harding, in custody of Inspector Byrnes under a warrant of extradition duly granted by Governor Hill on the requisition of the governor of Mississippi, accompanied by the proper papers showing the above-named persons to be charged with the crime of aiding and abetting a prize fight in Mississippi, were brought before Recorder Frederick Smyth, presiding justice of the court of general sessions of the peace of the city and county of New York, and a motion was made by Peter Mitchell, Esq., their attorney, to admit the fugitives to bail pending the determination of an application to Governor Hill for a revocation of the warrant. The warrant was in the usual form, and required Inspector Byrnes to arrest the fugitives, and after complying with the provisions of our criminal code to deliver them over to the custody of R. K. Jayne, the duly appointed agent of the State of Mississippi.

"After considering a brief which I submitted in opposition to the motion, Recorder Smyth held that he would not entertain the motion; that under our laws no provision is made for bail under such circumstances, and he accordingly refused to interfere.

"Later in the same day the fugitives were taken before Justice P. Henry Dugro at chambers of the superior court, on a writ of *habeas corpus*, and the motion was renewed before him. Judge Dugro denied the application for bail, and adjourned the hearing of the writ, on Mr. Mitchell's announcement that he intended to raise objections to the surrender on legal grounds, till Friday morning.

"The next morning, however, there arrived from Albany a new warrant for the arrest and surrender of Muldoon, Cleary, and Donovan, and a revocation of the original warrant. Thereupon the three last named agreed to waive all their legal rights, &c.; the writ of *habeas corpus* was dismissed by consent; Wakely and Harding were liberated, and the others were taken back to Mississippi by the agent."



within the jurisdiction of the court.<sup>1</sup> A leading case on this subject as between the States is that of *State v. Smith*,<sup>2</sup> before the court of appeals of South Carolina in 1829. The defendant, who was convicted of stealing a slave in South Carolina, was pardoned by the governor of that State on condition that he leave the State and never return. He left, but subsequently returned and remained for some time, until the governor issued a proclamation, stating his return, and offering a reward for his arrest. Hearing this, he fled to North Carolina, where he was unlawfully seized by private persons, brought back to South Carolina and lodged in jail. He applied for his discharge, on the ground, among others, of the illegality of his seizure and return. The court refused to discharge him. The doctrine of this case was applied by the supreme court of Pennsylvania, Gibson, C. J., in *Dows' case*,<sup>3</sup> in 1851. The facts were that Dows, who was charged by indictment with forgery, and by complaint with obtaining money by false pretences, in Alleghany county, Pennsylvania, fled to Michigan. A requisition having been made on the governor of that State, he issued his warrant for Dows' arrest and surrender. Subsequently, however, Dows was seized and taken to Pennsylvania by persons who had no warrant; and he claimed to be discharged because of the defect in the mode of his arrest and return. The court refused to release him. In the *State v. Ross & Mann*,<sup>4</sup> in 1866, the supreme court of Iowa refused to reverse the sentence of two persons convicted of horse stealing in that State, who claimed that the trial court had no jurisdiction of them, because they were arrested in Missouri and brought into Iowa by force and against their will, by persons acting without authority either under a requisition from the governor or otherwise. The doctrine of this case has since been affirmed by the Supreme Court of the United States.<sup>5</sup>

<sup>1</sup> *In re Miles*, 52 Vt. 609.

<sup>2</sup> 1 Bailey (S. C.), 283.

<sup>3</sup> 18 Pa. St. 87.

<sup>4</sup> 21 Iowa, 467.

<sup>5</sup> *Mahon v. Justice*, 127 U. S. 700; *In re Mahon*, 34 Fed. Rep. 525. For the wrongful abduction the remedy of the victim is against his abductors. *Botts v. Williams*, 17 B. Mon. 687.

§ 603. **Law in Kansas.** — In *State v. Simmons*,<sup>1</sup> the supreme court of Kansas, in 1888, permitted the method of arrest to be set up against the jurisdiction of the trial court, where the arrest was wrongfully made by an officer of that State. The facts are that the defendants, who were summoned as witnesses in a prosecution for a violation of a liquor law in Kansas, went to Nebraska. When they were called at the trial they did not appear, and an attachment was issued for them and placed in the hands of the sheriff. He went with two assistants into Nebraska, and by threats of force compelled the defendants to come back to Kansas. Subsequently a criminal information was filed against them, charging them with contempt of court in failing to appear and testify. Being under arrest on this information, they applied for a writ of *habeas corpus*, which the Lincoln district court refused. They were then convicted on the information and sentenced. An application for a new trial was refused, and from this judgment they took an appeal. The question raised was whether the district court had jurisdiction in the case. The supreme court of Kansas held that the arrest was illegal, and that the court below had no jurisdiction. The judgment of the district court was reversed and the defendants discharged.

§ 604. **Executive Request for Return of Person wrongfully arrested.** — It was said by Chief-Justice Gibson in *Dows' case*,<sup>2</sup> that if the governor of Michigan had demanded the return from Pennsylvania of the person who was held there on a criminal charge after having been abducted from the former State, the courts of Pennsylvania would have been bound to discharge him. This doctrine was applied by Judge Krebs, of the 46th judicial district of Pennsylvania, in 1884, in the case of one Norton, who was decoyed from Canada into New York, and there forcibly seized and transported to Pennsylvania, where he was held on a criminal charge. The persons concerned had previously failed to obtain a requisition from Governor Pattison, of Pennsylvania, on the governor of New York, for Norton's surrender. On December

<sup>1</sup> 39 Kans. 282.

<sup>2</sup> *Supra*, § 594. But see *Mahon v. Justice*, 127 U. S. 700.

9, 1884, Governor Cleveland, of New York, addressed a letter to Governor Pattison, with accompanying documents, requesting him, if compatible with his "ideas of justice and executive power," to cause Norton's release. Governor Pattison communicated this letter and the accompanying documents to Judge Krebs, in whose district was the county in which Norton was held, with a statement of the facts and a request that Norton be discharged. Upon the receipt of this communication Judge Krebs issued a writ of *habeas corpus* to the sheriff who held the prisoner in custody, and, after hearing the case and finding the facts alleged as to the kidnapping to be true, ordered him to be discharged. Before the governor of New York intervened, Norton obtained a writ of *habeas corpus* from the court of common pleas of Clearfield county, Pennsylvania, where he was detained, but was not permitted to show the manner of his arrest and was remanded into custody.<sup>1</sup>

<sup>1</sup> 31 Alb. L. J., p. 66 *et seq.* ; Albany Argus, Dec. 25, 1884, and Jan. 6, 1885.

I am indebted to ex-Governor Osborn, of Kansas, for his kind offices in obtaining for me a statement, dated July 3, 1890, from the private secretary of the governor of that State, of the following interesting case : —

"Early in 1876 the governor of Iowa issued his requisition upon the governor of Kansas for the return to the former State of an alleged criminal, one Harrington, *alias* Phillips. The usual warrant was issued in Kansas, and Phillips was placed under arrest. Phillips contended that he was not the person desired, and instituted *habeas corpus* proceedings before the probate judge. Our archives are not supplied with a record of the court proceedings in the case, but it is the recollection of ex-Governor Osborn that the proceedings were dismissed for want of jurisdiction. Application was then made by Phillips to United States District Judge Foster for a writ of *habeas corpus*, and it was claimed that, while the papers were on their way to Wichita for service, Phillips was surreptitiously taken from the State by the Iowa officers. Thereupon Governor Osborn addressed Governor Kirkwood a letter, of which the following is a copy : —

' March 16, 1876.

' *His Excellency, Samuel J. Kirkwood, Governor of Iowa.*

'SIR, — . . . Your attention is respectfully invited to the voluminous papers which, together with this communication, will be presented to you by Mr. Ruggles, one of the counsel for Phillips. Two points seem to be conclusively established : —

'First, That Williams was spirited away from Wichita in the night to avoid the service of a writ of *habeas corpus*, which it was known had been issued by Judge Foster of the U. S. district court, and had reached the place on the same evening.

'Second, That he was so taken away without any legal warrant whatever, and therefore in violation of the laws of this State. Mr. Davis was alone author-

§ 605. **Employment of Stratagem does not render Arrest Illegal.** — On August 24, 1886, Governor Hill, of New York, rendered a decision in the case of Daniel Brown, for whose surrender a requisition had been made by the governor of Pennsylvania on a charge of perjury. It appeared that Brown had fled to Canada, and while sojourning there was induced by false and fraudulent representations to come into New York, where he was immediately arrested. These representations were made by certain persons who were hired by the complainant in the perjury case to decoy the fugitive from Canada into New York, in order that he might there be arrested. They employed no force, but assumed to engage the fugitive as a peddler, and then, upon pretence that he was going a-peddling, persuaded him to cross the Niagara river with them, representing that it was the "Grand River," and that if he crossed it he would still be in Canada. Governor Hill held that the false representations were no bar to the rendition of the prisoner, who had come voluntarily into New York without force of any kind. Brown was, after his surrender, brought before a Federal court, and was remanded into custody, the court holding that stratagem, not in itself an infraction of law, did not entitle a fugitive from justice to discharge on *habeas corpus*.<sup>1</sup>

ized to receive Phillips and convey him from the State. The action of Mr. Scaman in departing with him was wholly unjustifiable.

'If, upon examination, I find that the proceedings taken against Davis in Wichita were so taken merely to defeat the execution of my warrant, I shall do what I lawfully may to cause them to be discontinued, as comity among the States and the ends of justice require that the extradition law shall be enforced in its letter and spirit. At the same time, I trust that your Excellency will consider whether the State of Iowa will deem it consistent with her dignity to retain the custody of an alleged criminal, when it is shown that such custody was secured by a bold infraction of the laws of a neighboring State.

'Commending the bearer to your courtesy, I have the honor to be,

'Yours very respectfully,

THOMAS A. OSBORN.'

"Phillips was returned to this State, where he remained unmolested, but I am unable to find in the archives of the executive department any reply to this communication.

"Yours, very respectfully,

"JAMES SMITH, *Private Secretary*."

<sup>1</sup> *Ex parte Brown*, 28 Fed. Rep. 653.

§ 606 **Irregularities in Rendition no bar to Prosecution.**— It is a general principle that mere irregularities in proceedings in the delivery of fugitives from justice cannot be set up as a bar to prosecution. Such was the ruling of the supreme court of California in 1889 in the case of Calvin Pratt, who, in the absence of any treaty, was surrendered by Japan to the authorities of California on the request of the governor of that State; the government of the United States refusing, in the absence of a convention, to ask for the extradition directly.<sup>1</sup> But, where a fraud was committed on the governors of both States in a rendition proceeding, the alleged fugitive was discharged on *habeas corpus* after his surrender, on the ground that it was obtained by fraud.<sup>2</sup>

<sup>1</sup> *People v. Pratt*, 78 Cal. 345. The court cited *Mahon v. Justice*, 127 U. S. 712, and *Ex parte Ah Men*, 77 Cal. 198.

<sup>2</sup> *State of Tennessee v. Jackson*, 36 Fed. Rep. 258. *Supra*, § 584. In *Ex parte Barker*, 6 Southern Rep. 7, before Somerville, J., supreme court of Alabama, April 20, 1889, an application was made for a writ of *habeas corpus*. The petitioner was arrested in Georgia without process. Subsequently he was handed over to the authorities of the State of Alabama on a warrant of rendition issued by the governor of Georgia, in compliance with a requisition of the governor of Alabama. This requisition was for the offence of grand larceny, but it was based on an affidavit charging that the prisoner "took and carried away," and omitting the word "feloniously." The return to the writ of *habeas corpus* disclosed that the prisoner was in custody in Alabama by virtue of a *capias* issued on an indictment charging the larceny for which his return was obtained. This being so, Judge Somerville refused to consider the alleged illegality of the arrest and rendition, the governor of Georgia making no complaint.

## CHAPTER VI

## SURRENDER.

1. *Constitutional Duty.*

§ 607. **Duty of Rendition made certain by the Constitution.**—It has been seen that the constitutional provision for the rendition of fugitives from justice is a confirmation of a previously existing practice.<sup>1</sup> In the case of *Commonwealth v. Deacon*,<sup>2</sup> Chief Justice Tilghman said: “The common good of the whole forbids an asylum in one part for crimes committed in another. So, prior to the American revolution, a criminal who fled from one colony, found no protection in another. He was arrested wherever found, and sent for trial to the place where the offence was committed.” In his very lucid and forcible decision in the case of *State v. Buzine*,<sup>3</sup> Chief Justice Booth said that the right to recover fugitive criminals as between the States of the Union was not derived from the Constitution, “but existed independently of it;” and he added that the constitutional provision was adopted “to make the arrest and surrender of the criminal, on demand of the executive authority of the State from which he fled, an imperative duty; and not to depend on the discretionary exercise of a right or power.” What may be taken as a just and philosophical commentary upon, as well as a prophecy of, the constitutional provision is found in a letter of Madison to Edmund Randolph, dated March 10, 1784,<sup>4</sup> on the defects in the rendition clause in the Articles of Confederation. The governor of South Carolina had demanded the surrender of a citizen of Virginia for an aggravated assault and battery upon a member of the legislature in the former State. The demand was referred to Edmund Randolph, then attorney-general of Virginia, who seems to have given an

<sup>1</sup> *Supra*, § 517.

<sup>2</sup> 4 Harr. (Del.) 472, 474.

<sup>3</sup> 10 S. & R. 125.

<sup>4</sup> 1 Mad. Writings, 66.

opinion adverse to compliance, and to have sent a copy of his opinion to Madison, who wrote upon it as follows: —

“ I have perused with both pleasure and edification your observations on the demand made by the executive of South Carolina of a citizen of this State. If I were to hazard an opinion after yours, it would be that the respect due to the chief magistrate of a Confederate State, enforced as it is by the Articles of Union, requires an admission of the fact as it has been represented. If the representation be judged incomplete or ambiguous, explanations may certainly be called for; and if, on a final view of the charge, Virginia should hold it to be not a *casus foederis*, she will be at liberty to withhold her citizen (at least upon that ground), as South Carolina will be to appeal to the tribunal provided for all controversies among the States. Should the law of South Carolina happen to vary from the British law, the most difficult point of discussion, I apprehend, will be whether the terms ‘ treason,’ &c., are to be referred to those determinate offences so denominated in the latter code, or to all those to which the policy of the several States may annex the same titles and penalties. Much may be urged, I think, both in favor of and against each of these expositions. The two first of those terms, coupled with ‘ breach of the peace ’ are used in the 5th article of the Confederation, but in a way that does not clear the ambiguity. The truth, perhaps, in this as in many other instances, is, that if the compilers of the text had severally declared their meanings, these would have been as diverse as the comments which will be made upon it.

“ Waiving the doctrine of the Confederation, my present view of the subject would admit few exceptions to the propriety of surrendering fugitive offenders. My reasons are these: 1. By the express terms of the Union, the citizens of every State are naturalized within all the others, and being entitled to the same privileges, may with the more justice be subjected to the same penalties. This circumstance materially distinguishes the citizens of the United States from the subjects of other nations not so incorporated. 2. The analogy of the laws throughout the States, and particularly the uniformity of trial by juries of the vicinage, seem to obviate the capital objections against removal to the State where the offence is charged. In the instance of contiguous States, a removal of the party accused from one to the other must often be a less grievance than what happens within the same State when the place of resi-

dence and the place where the offence is laid are at distant extremities. The transportation to Great Britain seems to have been reprobated on very different grounds; it would have deprived the accused of the privilege of trial by jury *of the vicinage*, as well as of the use of his witnesses, and have exposed him to trial in a place where he was not even alleged to have ever made himself obnoxious to it; not to mention the danger of unfairness arising from the circumstances which produced the regulation. 3. Unless citizens of one State transgressing within the pale of another be given up to be punished by the latter, they cannot be punished at all; and it seems to be a common interest of the States that a few hours, or at most a few days, should not be sufficient to gain a sanctuary for the authors of the numerous offences below 'high misdemeanors.' In a word, experience will show, if I mistake not, that the relative situation of the United States calls for a 'Droit Public' much more minute than that comprised in the federal articles, and which presupposes much greater mutual confidence and amity among the societies which are to obey it, than the law which has grown out of the transactions and intercourse of jealous and hostile nations."

§ 608. **Duty Absolute.** — The sweeping and imperative provision of the Constitution was adopted to give effect to such views as those expressed by Madison. "It makes obligatory," said Chief Justice Green, "upon every member of the confederacy the performance of an act which previously was of doubtful obligation."<sup>1</sup> "The Federal Constitution," said Chief Justice Gibson, "takes away this discretion [in respect to rendition] in the case of an executive demand, and makes that a matter of duty which else had been a matter of grace."<sup>2</sup> Said the court of appeals of South Carolina, in the case of a fugitive from justice: "A question arising under the Constitution is not a question of comity between foreign States, but of positive paramount law between co-States, which all executive, judicial, and ministerial officers must observe and enforce."<sup>3</sup>

"The purpose, then," said Chief Justice Beasley, "of this provision of the Constitution was, as I conceive, two-fold; *first*, to

<sup>1</sup> Matter of Fetter, 3 Zab. 311.

<sup>2</sup> Dows' case, 18 Pa. St. 37.

<sup>3</sup> State v. Anderson, 1 Hill, 327. See also *Ex parte Swearingen*, 13 S. C. 81.



impose an obligation on each State to surrender criminals fleeing from the justice of another State ; and, *second*, to define clearly the class of criminals to be surrendered. . . . I think this end has been attained. For, in the first place, the language of the clause is so plainly imperative in its character as to leave no room for contention that the obligation now imposed on the respective States to surrender criminals, is, in the least degree, a matter of discretion. In the place of spontaneous submission to the law of comity, there is now substituted that implicit obedience which is due to a rule of law. . . . Hitherto the nation has trusted this important office, so essential to the harmony of the States and the complete administration of the laws, in the hands of the several local executives ; and although these officers, as has just been observed, cannot be coerced to take upon themselves the burthen of such duty, yet, nevertheless, it is with satisfaction that I remark that it has been, for the most part, discharged by them in entire good faith, and with perfect loyalty to the constitutional requisition. The few exceptions which are recollected have, in general, arisen from a mistaken sense as to the true nature of the duty itself ; for an idea has undoubtedly prevailed, to a considerable extent, that such duty in some respects was one resting in discretion. But this is altogether an error. If the demand be made in due form, and the requisite documents exhibited, showing that the fugitive is charged with crime, the duty to surrender becomes merely a ministerial one. Under such circumstances, to refuse to authorize the extradition is a clear infraction of the rule prescribed in the constitutional clause above quoted. I think it, therefore, indisputable, that the Constitution has made the surrender of a fugitive from justice, which by the law of nations depended on the concessions of comity, a rule of law of perfect obligation and entirely imperative in its character.”<sup>1</sup>

Said the supreme court of New York : “The duty of the governor of this State to issue the rendition warrant was imperative. Having performed the *quasi* judicial function of determining that the act of Congress had been complied with by the governor of Massachusetts, the remaining part of his duty was ministerial only.”<sup>2</sup> The absolute duty of the

<sup>1</sup> Matter of Voorhees, 32 N. J. L. (3 Vroom) 145 ; 1867. See also Von Holst's Constit. Hist. of U. S., p. 245.

<sup>2</sup> People, *ex rel.*, v. Pinkerton, 17 Hun, 199.

governor of a State or Territory to surrender upon a requisition made in accordance with the act of Congress has been emphasized by the supreme court of Georgia.<sup>1</sup> In Leary's case,<sup>2</sup> before a United States court, Choate, J., said: "The great weight of authority, as well as the obvious import of the language used, is that the Constitution established an *absolute right* to the surrender, when the case was one coming within the terms of the Constitution; that is, the case of a person *charged with crime*, who had *fled from justice*, and *whose surrender was demanded by the proper authority*." In a note to his last revision of his Commentaries, which was published in 1848, Chancellor Kent said: "I am not aware that there has been any judicial decision on this provision: and, as it stands, I should apprehend that, on the demand being made and the documents exhibited, no discretion remained with the executive of the State to which the fugitive had fled, and that it was his duty to cause the fugitive to be arrested and surrendered."<sup>3</sup> In a letter written May 15, 1850, to the citizens of Newburyport, Massachusetts, Mr. Webster, referring to the act of 1793, said:<sup>4</sup>—

"It will be observed that in neither of the two cases does the law provide for the trial of any question whatever by jury, in the State in which the arrest is made. The fugitive from justice is to be delivered, on the production of an indictment or a regular affidavit, charging the party with having committed the crime; and the fugitive from service is to be removed to the State from which he fled, upon proof, before any authorized magistrate, in the State where he may be found, either by witnesses or affidavit, that the person claimed doth owe service to the party claiming him, under the laws of the State from which he fled. In both cases, the proceeding is to be preliminary and summary; in both cases, the party is to be removed to the State from which he fled, that his liabilities and his rights may be there regularly tried and adjudged by the tribunals of that State, according to its laws. In the case of an alleged fugitive from justice, charged with crime, it is not to be taken for granted, in the State to which he has fled, that he is

<sup>1</sup> Johnston v. Riley, 13 Ga. 97; 1853.

<sup>2</sup> 10 Ben. 197.

<sup>3</sup> 2 Kent's Comm. 32, note (h), 12th ed.

<sup>4</sup> 6 Webster's Works, 554-555.

guilty ; nor in that State is he to be tried, or punished. He is only to be remitted for trial to the place from which he came."

In the controversy between Governor Kent of Maine and Governor Gilmer of Georgia in 1839,<sup>1</sup> it was conceded that, if the conditions of the act of Congress were complied with, the duty of surrender was absolute. This doctrine was laid down by the Supreme Court of the United States in *Kentucky v. Denison*, though it was held that the governor of a State was not compellable by *mandamus* to perform the duty.<sup>2</sup>

§ 609. **When Duty arises.** — The constitutional obligation in respect to the rendition of fugitives from justice being absolute, the next question to be considered relates to the conditions under which the duty must be held to exist. It was said in the case of *Clark*,<sup>3</sup> before the supreme court of New York, that the fugitive was to be surrendered, under the act of Congress, on the following conditions: (1) He must be demanded by the executive of the State from which he fled; (2) there must be a copy of an indictment found, or an affidavit made before a magistrate, charging him with having committed the crime specified; (3) such copy of the indictment or affidavit must accompany the requisition, and be certified as authentic by the executive of such State. This statement has been literally or substantially followed in nearly all the cases since that time, though some of them contain a reservation as to proof of flight.<sup>4</sup>

§ 610. **Question of Guilt irrelevant.** — It is always held by the courts that the question of the guilt or innocence of the accused is immaterial.<sup>5</sup> Such an inquiry is wholly incon-

<sup>1</sup> *Supra*, § 563.

<sup>2</sup> 24 Howard, 99. See *Ex parte Virginia*, 100 U. S. 339, and 10 Alb. L. J. 130.

<sup>3</sup> 9 Wend. 212.

<sup>4</sup> *Ex parte Reggel*, 114 U. S. 642; *Knowlton's case*, 5 Crim. L. Mag. 250; *Ex parte Swearingen*, 13 S. C. 74; *State v. Richardson*, 34 Minn. 115. For the discussion of the question of fleeing from justice, see *supra*, §§ 578, 589, 590.

<sup>5</sup> *Ex parte Swearingen*, 13 S. C. 81; *People, ex rel., v. Pinkerton*, 17 Hun, 199. Only these two cases are cited, but the cases are all to this effect. See also *People, ex rel., v. Brady*, 56 N. Y. 182; *Wilcox v. Nolze*, 34 Ohio St. 520; *Matter of Clark*, 9 Wend. 212. "It is settled that all inquiry into his guilt or innocence of the crime charged is wholly irrelevant in this proceeding. That question is to be investigated and determined by the courts of the State where the alleged crime

sistent with the constitutional provision. In extradition there are two theories of surrender, according to one of which there must be *prima facie* evidence of guilt, and according to the other of which there need be only proof of the existence of a criminal charge against the alleged fugitive in the demanding State. In the rendition of fugitives between the States of the American Union the rule is established by the Constitution, which requires the surrender of the fugitive when he is "charged" with crime in the demanding State. This provision is interpreted by the act of Congress when it says that the requisition of the demanding executive shall be accompanied with a copy of an indictment found, or with an affidavit, "charging" the crime for which the rendition is sought. It is, therefore, the existence of a criminal charge against the fugitive in the demanding State or Territory, and not proof of his guilt or innocence, that, together with the demand and the evidence of fleeing, whenever such evidence may properly be required,<sup>1</sup> gives rise to the obligation to surrender.

§ 611. **Exercise of Judgment in surrender.**— But is the executive upon whom the demand is made bound to accept the indictment or the affidavit as constituting a criminal charge in the State from which the fugitive escaped? The act of Congress says that the indictment or affidavit shall be certified by the demanding executive as authentic. This is the only proof of authenticity provided, and is conclusive as to the verity of the paper.<sup>2</sup> But is the certificate of the demanding executive that the indictment or affidavit is authentic also conclusive proof that it charges a crime in the sense of the Constitution and the act of Congress? The Supreme Court of the United States, in *Kentucky v. Denison*, said:—

"It will be observed, that the judicial acts which are necessary to authorize the demand are plainly specified in the act of Con-

was committed." Decision of Governor Hill, *Matter of Mitchell*, 4 N. Y. Crim. Rep. 596, 599; December, 1885.

<sup>1</sup> *Supra*, §§ 570, 589, 590.

<sup>2</sup> *Ex parte Smith*, 3 McLean, 103; *Com. v. Denison*, 24 How. 99; *Ex parte Swearingen*, 18 S. C. 81.

gress ; and the certificate of the executive authority is made conclusive as to their verity when presented to the executive of the State where the fugitive is found. He has no right to look behind them, or to question them, or to look into the character of the crime specified in this judicial proceeding."

This language has been construed by the court of appeals of South Carolina in *Ex parte Swearingen* to mean that the duly certified indictment or affidavit is conclusive as to the existence of a valid criminal charge in the demanding State. At the same time the court also observed that the affidavit accompanying the return before it showed that the relator stood charged with the crime of riot, committed in the State of Georgia. It does not seem to be necessary, as a matter of logic, to hold that the certification of the indictment or the affidavit as authentic is also conclusive proof that the one paper or the other sufficiently charges the fugitive with crime. Nor does the fact that a duty is absolute and ministerial necessarily exclude all exercise of judgment. It may be argued that there is little need of requiring a formal demand on the executive of a State, and still less of requiring it to be accompanied with certain evidence, if he is bound to accept any sort of a paper that may be certified to him, as containing a valid and sufficient charge of crime. It may also be argued that to submit with the demand a document that does not substantially charge a crime is not a compliance with the act of Congress on the part of the demanding executive, and hence does not impose upon the executive upon whom the demand is made the duty of yielding to it. This view of the subject was very forcibly stated by Chief Justice Cartter, of the District of Columbia, acting as chief executive, upon a demand of the governor of North Carolina. While admitting that the duty to surrender was absolute, he held that it was not "ministerial" in the sense of excluding all exercise of judgment. It was not the province, he said, of the executive upon whom the demand was made to go into questions of pleading, but it was proper for him to examine the indictment or affidavit to see that a crime was substantially charged. He held that the indictment before him

substantially charged a crime, and ordered the person demanded to be delivered up.<sup>1</sup>

The view of the subject taken by Chief Justice Cartter has since been expressed by the Supreme Court of the United States.<sup>2</sup>

## 2. *Executive Discretion.*

§ 612. **Theory of Recent Origin.** — There has grown up in some of the States a theory of discretion which, although it has in several instances found legislative expression, appears to be at variance with the provisions of the Constitution and the act of Congress.<sup>3</sup> We look in vain for the acceptance of this theory until the second quarter of the present century. Its appearance is contemporaneous with the spread of the agitation for the abolition of slavery, and between 1830 and 1840 we find it advanced in several cases involving offences against slave laws.<sup>4</sup> By the statutes of some of the States, as by those of Alabama, it is expressly provided that, when the requirements of the act of Congress have been complied with, the person charged "must" be given up; and the usual tenor of such legislation is that he shall be surrendered upon evidence the same or substantially the same as that prescribed by the act of 1793. The theory of discretion, which is the reverse of the theory upon which the act of 1793 is grounded, first found legislative expression in Massachusetts, but not until a late day. Until 1801 there was no legislation in that State in regard to the delivery up of fugitives from justice. In that year an act was passed, entitled "An Act providing for the appointment of Agents for demanding and receiving fugitives from justice, and for defraying the expense of transporting them from other States in the Union to this Commonwealth." Following the title is a preamble in which, after a

<sup>1</sup> *In re Perry*, 2 Crim. L. Mag. 84. See *infra*, § 616.

<sup>2</sup> *Roberts v. Reilly*, 116 U. S. 80, 95.

<sup>3</sup> Wharton's Cr. Pl. & Pr., 9th ed., § 34. The author of the work here cited, in some of the earlier editions of his work on Criminal Law, advocated the theory of discretion, but upon further examination he rejected it as being contrary to the Constitution.

<sup>4</sup> *Supra*, §§ 523-525, 563. See also *Kentucky v. Denison*, 24 How. 99, cited in *Roberts v. Reilly*, 116 U. S. 90.

quotation of the constitutional provision, it is recited that, while the act of 1793 required the delivery of the offender "to the agent of the State" which should make the demand, no provision had been made in Massachusetts "for the appointment of such agent." It is then enacted in section 1 that the governor of the Commonwealth shall be authorized to appoint agents to demand from the executive authority of any other State any person charged with crime in Massachusetts; and section 2, which completes the statute, reads as follows:—

"That when a demand shall be made on the executive authority of this State, by that of any other, for the delivery over of any person charged with treason, felony, or other crime, in the State from which the demand shall be made, the Governor, with the advice of the Council, shall issue his warrant, under the seal of the Commonwealth, authorizing the Agent or Agents who shall make the demand, to transport such persons so delivered over to the line of this State, on the way to the State which shall make the demand, at the expense of such Agent or Agents, and shall also in such warrant command all civil officers within the State to afford such Agents all needful assistance in transporting such person so charged pursuant to such warrant." <sup>1</sup>

It has been urged that the clause in this section by which the advice of council is required shows that the doctrine of discretion existed in Massachusetts at a very early day. We do not think this conclusion necessary. It was the theory of the constitution and government of the Commonwealth of Massachusetts that the governor should act with the advice of his council, which, it was said, should be held "for the ordering and directing the affairs of the Commonwealth, agreeably to the constitution and the laws of the land."<sup>2</sup> In the first section of the act now under consideration, by which the governor was authorized to appoint agents, he was not empowered to draw warrants for the payment of their expenses except "by and with the advice of the council."<sup>3</sup> The

<sup>1</sup> Act of 1801, ch. ii. ; Laws of the Commonwealth of Mass., vol. iii. p. 491.

<sup>2</sup> Constitution of Massachusetts, ch. ii. art. 4.

<sup>3</sup> In this relation, see *Id.*, ch. ii. art. 11.



second section, as stated in a marginal note in the original volume of the laws, was enacted in aid of the agents of other States, and the warrant directed to be issued to them was clearly for that purpose and carried with it all the civil authority of the State. In view of the express recital, in the preamble to the act, of the constitutional provision and the act of Congress of 1793, and of the absence of any contrary provision, it is conceived that the requirement of the advice of the council related to the manner and form of the matter, rather than to the exercise of discretion in complying with the demands of other States. If, in spite of these considerations, it be insisted that it was the theory of the legislature to make the issuance of the warrant a matter of discretion, that theory was afterwards discarded; for, on the 28th of January, 1820, an act was approved which repealed so much of section 2 of the act of 1801 as provided for the advice of the council.<sup>1</sup> This excision made the language of the act of 1801 purely mandatory, and left the constitutional provision and the act of 1793, recited in the preamble, to furnish the only rule on the subject. Thus the law remained till 1834, when an act was passed which provided that whenever a demand should be made upon the governor, under the Constitution and laws of the United States, for the delivery up of a person charged with crime in another State, it should be the duty of the attorney-general, or other prosecuting attorney, if required by the governor, to inquire into and state in writing "the situation, condition, and circumstances under which such demanded person" was found, and especially whether he was held for any crime or offence under the law of Massachusetts, whether he was held under any civil process, and whether the demand was "made according to law and the said person ought to be delivered up." While it may be argued that the words "ought to be delivered up" imply discretion, we think that, when applied to the advisory and semi-judicial function the attorney-general was called upon to perform, they rather state a conclusion dependent upon the question whether the demand was "made according to law." This in-

<sup>1</sup> Laws of Massachusetts, 1820, p. 314.



terpretation is confirmed by the immediately succeeding and concluding words of the act, which are as follows:—

“And the governor shall thereupon, if said demand is conformable to law, issue his warrant, under the seal of the Commonwealth, authorizing the removal and delivery of such person so demanded to be made forthwith, or shall issue it at such future time as the said governor shall deem to be most conducive to justice and the provisions of the Constitution and law of the United States aforesaid.”<sup>1</sup>

The phrase “conformable to law,” which is substantially the same as “according to law,” and measures the governor’s duty, obviously means in conformity with the Constitution and the act of Congress, to which express reference is made, and with the provisions of the statute itself; and in the latter the only clause that could be construed as involving discretion is that relating to the accused being held on criminal or civil process, which presents quite an independent question.<sup>2</sup> In 1836, however, the act of 1834 was embodied in a revision of the laws with an apparently material alteration. The provision as to the opinion of the attorney-general, or other prosecuting attorney, was left as before, except that, in accordance with the interpretation we have heretofore suggested, it was explicitly provided that he should report whether the demand was made conformably to law, “so that such person ought to be delivered up.” But, in respect to the issuance of the warrant of surrender, it was provided that if the governor should be “satisfied” that the demand was “conformable to law, and ought to be complied with,” he should issue his warrant, &c.<sup>3</sup> This language, when used in reference to the final action of the executive, may be thought to announce the theory of discretion, though in terms much less explicit than those that were subsequently employed. There was no further addition to or change in the law until 1857, when an act was passed to forbid the delivery up of any person until he had had an opportunity to apply for a writ of

<sup>1</sup> Laws of Massachusetts, 1834, ch. 155.

<sup>2</sup> *Infra*, §§ 617, 618.

<sup>3</sup> Revised Statutes, 1836, ch. 142, section 7.

*habeas corpus*.<sup>1</sup> But in 1859 a statute was adopted which provided that no executive warrant or requisition should be issued unless the demand for surrender or the application for the requisition should be accompanied with sworn evidence that the party charged was a fugitive from justice, and with a duly attested copy of an indictment, or a duly attested copy of a complaint made before a court or magistrate authorized to receive the same; "such complaint to be accompanied by affidavits to the facts constituting the offence charged, by persons having actual knowledge thereof: *provided, however,* that nothing herein shall be construed to require the governor to issue a warrant, or a requisition, as aforesaid, upon the evidence aforesaid, nor to prevent his requiring any other or further evidence in support of such demand or application."<sup>2</sup> The provisions of the act of 1834, of the revision of 1836, and of the acts of 1857 and 1859, were substantially worked into the revision of 1860, with, however, the further provision that the report of the attorney-general should contain an opinion as to the "legality or expediency" of complying with the demand.<sup>3</sup> This provision completed the theory of discretion; and thus the law stands to-day.<sup>4</sup>

The views expressed by the writer as to the late appearance of the theory of executive discretion in Massachusetts are confirmed by the record of the cases in which the governor of that State has failed to comply with requisitions. Down to 1820, there are only three instances of non-compliance; one in 1811, one in 1814, and one in 1818. The reasons for the failure to comply in the case in 1814 cannot be ascertained, since the papers are lost. But, both in the case in 1811 and in that in 1818 the ground of refusal was that the person demanded was serving a criminal sentence in Massachusetts; and this, in our opinion, does not involve the theory of discretion.<sup>5</sup> From 1818 to 1838 there is no instance of non-compliance. From the latter date on, cases of refusal occur with more or

<sup>1</sup> Laws of Massachusetts, 1857, ch. 289.

<sup>2</sup> Laws of Massachusetts, 1859, ch. 81.

<sup>3</sup> General Statutes, 1860, ch. 177.

<sup>4</sup> Public Statutes, 1882, ch. 177.

<sup>5</sup> *Infra*, § 617.

less irregularity; but we venture to say that in many of those cases the ground of refusal was a defect in the process,<sup>1</sup> or the allegation that the person charged was not a fugitive from justice,<sup>2</sup> and that in comparatively few instances was there a clear assertion of the theory of discretion.<sup>3</sup>

In regard to the provisions of the Massachusetts law, it may be suggested that they depart from the principle of the Constitution and the act of Congress in two respects: (1) They require evidence of the criminality of the person demanded, instead of evidence that he is "charged" with crime; (2) They make compliance with the demand a question of "expediency," and not of legal obligation.

§ 613. **Case of Kimpton.** — In 1878 a case occurred under the Massachusetts statute which was the subject of much controversy.<sup>4</sup> Under date of August 8, 1878, Governor Hampton, of South Carolina, demanded of Governor Rice, of Massachusetts, the rendition of Hiram H. Kimpton, formerly a financial agent of South Carolina, who was charged with complicity in the fraudulent issuance of bonds of that State. The requisition having been referred to the attorney-general of Massachusetts, he heard counsel both for the State of South Carolina and for the prisoner, and on August 29, 1878, reported that Kimpton ought not to be delivered up. Accompanying the requisition was a copy of an indictment found in August, 1877, charging John J. Patterson, Miles G. Parker, and Kimpton with the commission of the crime above stated in March, 1872; and there was also an affidavit

<sup>1</sup> *Supra*, § 611.

<sup>2</sup> *Supra*, §§ 570-578, 581.

<sup>3</sup> In the very able and exhaustive brief of Mr. J. H. Benton, Jr., in the Vinal case, *supra*, § 570, there is a list of the cases in which the governor of Massachusetts has refused to comply with requisitions, but the reasons are not disclosed. I am, however, indebted to Mr. Benton for information as to the cases in 1811, 1814, and 1818. The number of cases found in the brief may be summarized as follows: 1811, 1; 1814, 1; 1818, 1; 1838, 2; 1839, 1; 1841, 1; 1842, 1; 1843, 2; 1846, 2; 1848, 2; 1849, 3; 1850, 4; 1851, 10; 1852, 3; 1854, 3; 1856, 5; 1857, 1; 1862, 1; 1863, 1; 1865, 1; 1875, 3; 1876, 1; 1877, 1; 1878, 2; 1879, 5; 1882, 6; 1883, 4; 1884, 1; 1887, 1. The longest interval in this list after 1836, the year of the revision containing the implication of discretion, is from 1865 to 1875.

<sup>4</sup> *New York Times*, Sept. 1, 1878.

to the effect that Kimpton was a fugitive from the justice of South Carolina, and within the limits of Massachusetts. These papers were certified by the governor of South Carolina as authentic, and it was claimed that it was the duty of the governor of Massachusetts under the Constitution and the act of Congress forthwith to deliver the fugitive up. "Should I adopt this doctrine," said the attorney-general, "I must assume that the statute of Massachusetts, which has now been in force for a period of seventy-five years, in aid of the provisions of the Constitution of the United States for the rendition of fugitives from justice, to be an unconstitutional law." He further said that the practice of exercising discretion had "been uniform" in Massachusetts "since the passage of the first statute, in the year 1801," and declared that the Supreme Court of the United States in the case of *Taylor v. Taintor*<sup>1</sup> had "distinctly held" that the executive of a State might "exercise discretion in the rendition of a fugitive from justice." After citing several classes of cases in which the executive of Massachusetts had been accustomed to exercise discretion, the attorney-general concluded his report as follows:—

Upon the most careful consideration which I am able to give the question presented, I feel bound to advise your Excellency that chapter 177 of the General Statutes is constitutional, and that it is your duty to exercise sound discretion in its administration. In the present case I find, and so report to your Excellency, that the requisition is in due form of law, and that Kimpton is not held in custody or under recognizance to answer for any offence against the laws of this State or the United States, or by force of any civil process. Were this the whole of the case, I should advise your Excellency that a warrant of extradition might properly issue. But I find, further, that the crime with which Kimpton stands charged was committed in April, 1872, and that no attempt was made to prosecute him or his co-defendants until August, 1877; nor does it appear there is any present intention to try them upon the indictment. It does appear that for many months negotiations have been going on between the authorities of South Carolina and

<sup>1</sup> 16 Wall. 866.

this respondent, under which he was offered immunity if he would return to that State and volunteer as a witness in her courts, and that this offer was renewed after his arrest here. Upon all the evidence, I am of opinion that the indictment when found was for an ulterior purpose which does not appear, and not for the purpose of trying him for any supposed crime against the laws of that State. I therefore advise your Excellency that it is not expedient to comply with the request.

I am, &c.,

CHARLES R. TRAIN.<sup>1</sup>

On August 30, 1878, Governor Rice wrote to Governor Hampton, informing him of the action that had been taken upon the requisition, and of the substance of the report of the attorney-general, and said:—

“In the present case, in my judgment, the object in procuring the indictment against Patterson, Parker, and Kimpton does not appear to be for the purpose of trying Kimpton for the crime charged against him, but for a different purpose. I feel it to be my duty, in the exercise of a sound discretion, to adhere to the practice of my predecessors, and I therefore respectfully decline to accede to your request.”<sup>2</sup>

On August 30, the day on which the letter of Governor Rice was written, Kimpton was released from jail and went free. On September 24 Governor Hampton addressed a letter to Governor Rice in which, after expressing regret that his absence had delayed his reply to the communication of the latter, and referring to the demand for Kimpton's rendition as having been made in accordance with the Constitution and the act of Congress, he said:—

“I regret that the chief executive of the great State of Massachusetts should have committed so flagrant a violation of the supreme law of the land, — a violation irreparable in its nature, as this State, suffering thereby, has no possible redress. Had you confined yourself to giving a simple refusal to surrender the fugitive, I should make no further comments upon your letter, as the

<sup>1</sup> 2 Va. L. J. 579 ; New York Times, Aug. 31, 1878.

<sup>2</sup> New York Times, Aug. 31, 1878.

disregard of the Constitution by the executive authority of one State concerns the whole people of the United States. But, inasmuch as you have seen fit to base your action on the ground that, in your judgment, the object in procuring the indictment against Patterson, Parker, and Kimpton does not appear to be for the purpose of trying Kimpton for the crime charged against him, but for a different purpose, it is my duty, as the governor of South Carolina, to add that your statement is entirely unwarranted, and to repel the unworthy imputation, as I do, with indignant scorn."<sup>1</sup>

The case of Kimpton attracted great attention, and brought forth the most exhaustive discussions that had ever been made of the subject of the rendition of fugitives as between the States and Territories of the United States.<sup>2</sup> It seems that the evidence of an ulterior purpose on the part of the authorities of South Carolina consisted in the fact that Kimpton, while eluding pursuit in Canada, entered into correspondence with them looking to an arrangement whereby he might return and secure immunity. The authorities of South Carolina agreed that if he would return to that State and tell all he knew about certain financial transactions, and if this testimony should be used, all the indictments against him should be dropped; but that if his testimony should not be used, he should be allowed to return to the north, and matters should remain as before. This proposition Kimpton rejected. Whether proof of such a negotiation should be a bar to the extradition or the rendition of a fugitive criminal is more than doubtful.<sup>3</sup> It was especially so in the case of Kimpton, since at the time the negotiations took place he was in Canada, where he could not be reached for the offence with which he was charged. But, had this circumstance been lacking, the fact that he had been offered immunity if he would give evidence against his co-defendants would not have been

<sup>1</sup> New York Times, Sept. 25, 1878.

<sup>2</sup> It would be improper in this relation to omit reference to the articles by I. T. Hoague, 13 Am. L. Rev. 201; by Richard B. Tunstall, 2 Va. L. J. 579; by J. Manford Ker, 13 West. Jur. 145. The article of Mr. Hoague, which is rich in historical matter, caused several well-known writers to abandon their advocacy of the theory of discretion, and to become of the number of its opponents.

<sup>3</sup> *Supra*, § 441.

very cogent evidence that he was indicted upon false or insufficient grounds, and not in good faith, or that, having declined the offer, his rendition was not sought with a view to try him.

The attorney-general of Massachusetts was in error in assuming that the statute of that State, which made the rendition of fugitives discretionary, had been in force for seventy-five years, and that the practice of exercising discretion on the subject had been uniform since 1801.<sup>1</sup> Nor does the case of *Taylor v. Taintor* sustain the view that the executive upon whom the demand is made may inquire whether it has an ulterior purpose.<sup>2</sup>

§ 614. *Delaware, Louisiana, and Ohio.*—The Revised Statutes of Louisiana of 1870 provide that the governor may “in his discretion” deliver up fugitives, and that it shall be his duty to require such evidence of guilt as would justify commitment for trial there, but the attorney-general of Louisiana informs me that the authorities follow the act of Congress, and not the inconsistent local statute. In Ohio all the principal provisions of the Massachusetts statute have been re-enacted, with the additional requirement that the demand must be accompanied with sworn evidence that it is made in good faith, and not to collect a debt or a pecuniary mulct, or to remove the person in order to serve him with civil process.<sup>3</sup> In 1883 the Ohio statute was substantially

<sup>1</sup> *Supra*, § 612.

<sup>2</sup> *Infra*, § 618. It is often stated that the New Hampshire law is taken from the Massachusetts statutes. This is somewhat misleading. The New Hampshire statute is based on the Massachusetts Revised Statutes of 1836.

<sup>3</sup> This provision had its origin in a joint resolution of the General Assembly of Ohio, March 25, 1870, “relative to the surrender of persons charged with treason, felony, or other crimes,” which is as follows:—

“Whereas, The clause in the Constitution of the United States, requiring the surrender of a person charged in any State with treason, felony, or other crime, who shall flee from justice and be found in another State, was intended to subserve only great public interests, and not to apply to trivial offences, or to be made subservient to private interests by being used to enforce the collection of debts, or to remove the citizen of any State into a foreign jurisdiction that he might there be served with civil process.

“And whereas, Great abuses have recently been perpetrated in this regard against the citizens of the State.



adopted by Delaware. These various provisions far exceed the requirements of extradition between independent nations, and render that a matter of discretion which, under the treaties, is a matter of obligation.

§ 615. **Maryland.**—There is no statute in Maryland on the subject of interstate rendition, and the doctrine of executive discretion is not known to have obtained there; but in the case of Max Juhn, in the summer of 1890, it was announced very broadly. The case involved another question,—that of constructive flight in respect to the offence of obtaining goods by false pretences. But, after discussing that subject, the attorney-general of Maryland, whose counsel had been sought, advised the governor as follows:—

“There is another matter for consideration to which this citizen of Maryland is entitled. One of the rules of the executive department, long ago established, is in these words: ‘In all cases the greatest care will be exercised to ascertain beyond a doubt that the object is not to collect a debt. . . . In all cases of false pretences, embezzlement, conspiracy, and similar crimes, the *strongest affirmative evidence* will be required that the object is not to collect a private debt.’ Of course this rule applies as well to the issue of a warrant of arrest as to the issue of a requisition.

“The evidence submitted by the representative of the State of

“And whereas, By the practice of all the States, a discretion has been recognized as proper to be exercised by the executive authority of each State, both as to the cases in which a requisition shall be made for the surrender of an alleged fugitive, and as to those in which the demand shall be granted, and it is proper that this discretion should, as far as possible, be limited and defined; therefore,

“*Resolved by the General Assembly of the State of Ohio*, That the executive authority of this State in its action under said clause of the Constitution of the United States should, in the opinion of the General Assembly, be governed by the following rule, both in making requisitions on other States and in allowing requisitions by other States on this State, namely: No requisition shall be made or allowed for an alleged fugitive, unless the governor be clearly satisfied that the requisition is sought or made in good faith for the punishment of an offence within the proper meaning of the said clause of the Constitution, and that it is not sought or made for the purpose of collecting any debt or pecuniary mulct, or for the purpose of removing the alleged fugitive to a foreign jurisdiction with a view there to serve him with civil process.”

Paper read by Henry D. Hyde: Report of the third annual meeting (1880) of the American Bar Association, pp. 196, 197.



New York and the counsel for the accused, does not satisfy me ' *beyond a doubt* ' that the object of this criminal proceeding is not ' to collect a private debt. ' Notwithstanding the declaration of the prosecuting creditors themselves, there is evidence, entitled to weight, which goes to show negotiations and offers with and by the party, whose affidavit, as Clafin & Co.'s collector, is attached to the requisition, which, if consummated, were to be the basis of an abandonment of this prosecution.

" Under such circumstances, no warrant of arrest should, in my judgment, have been granted. But as a mandate was inadvertently issued, should you agree with my conclusions, I would advise the recall of the warrant and the discharge of the accused, and a direction to the officer having it in charge for execution to return it to the executive department without delay."

Acting upon this advice, the governor declined to issue a warrant of surrender.<sup>1</sup>

Viewed purely as a matter of reason, apart from the provisions of the Constitution and the act of Congress, we should not suppose that rules adopted by the executive department of a State to govern applications for requisitions would apply as a matter of course to requisitions emanating from other States. That the direct responsibility under which the authorities of every government stand in the exercise of a comprehensive supervision over the enforcement of its criminal laws, is not transferred to the authorities of another government when they are asked to deliver up a fugitive from justice, is recognized in all extraditionary arrangements. The very fact that such arrangements are made presupposes the existence of good faith and mutual confidence in the administration of justice within the jurisdiction of each of the contracting parties. Hence it would be an anomaly to find in an extraditionary arrangement a stipulation that the party applying for the surrender of an alleged offender should be required to show beyond a reasonable doubt that the application was made in good faith, and not for an ulterior purpose. That such a stipulation was deemed necessary, or even expedient, would be a powerful argument against the conclusion

<sup>1</sup> *Supra*, § 585.

of any arrangement at all. But, as between the States of the United States, all uncertainty on the subject seems to vanish, when we consider their intimate Federal relations, and their categorical duty under the specific provisions of the Constitution.<sup>1</sup>

Moreover, it may be observed that there exists in the State of New York, in respect to applications for requisitions, a rule similar to that cited by the attorney-general of Maryland; and a rule of the same purport has been adopted in many other States. While the absence of such a rule in the demanding State would not be a ground for suspicion and distrust, and would not excuse a refusal to honor its demand, yet the existence of the rule is, as an evidence of care in granting requisitions, only an additional reason why the constitutional duty to comply with them should be promptly and strictly kept.

The reference in the opinion of the attorney-general of Maryland to the fact that Juhn was a citizen of that State, does not appear to have been intended to convey the impression that the Constitution admits of any discrimination in the treatment of requisitions on that ground. The question of citizenship does not enter into the subject. It is obviously excluded both by the Constitution and the act of Congress.

§ 616. **Cannot be presumed that Fugitive will not have a fair Trial.** — Chief Justice Cartter, of the District of Colum-

<sup>1</sup> On the subject of the constitutional provision, it is pertinent to quote in the present relation the following passage: "For this was not a compact of peace and comity between separate nations who had no claim on each other for mutual support, but a compact binding them to give aid and assistance to each other in executing their laws, and to support each other in preserving order and law within their confines, whenever such aid was needed and required; for it is manifest that the statesmen who framed the Constitution were fully sensible, that from the complex character of the government it must fail unless the States mutually supported each other and the general government; and that nothing would be more likely to disturb its peace, and end in discord, than permitting an offender against the laws of a State, by passing over a mathematical line which divides it from another, to defy its process, and stand ready, under the protection of the State, to repeat the offence as soon as another opportunity is offered." Taney, Ch. J., delivering the opinion of the Supreme Court, in *Kentucky v. Denison*, 24 How. 66, 100.

bia, acting, as chief executive of the District, upon a demand of the governor of North Carolina, refused to assume that the fugitive would not have a fair trial.<sup>1</sup> In 1889 the governor of South Carolina made a requisition upon Governor Beaver, of Pennsylvania, for the surrender of one John Yeldell, *alias* E. F. Flimon, charged with the commission of a murder in the former State in the Presidential campaign of 1884. Shortly after the date of the alleged murder, Yeldell went to Pittsburg, in the State of Pennsylvania, where he took the name of E. F. Flimon and became a clergyman. Strong opposition was made to his surrender on the ground that, if returned, he would not have a fair trial. Governor Beaver, however, surrendered him, and he was tried and acquitted.<sup>2</sup>

§ 617. **Objections to Theory of Discretion.** — The theory that, a legal demand having been made, the executive authority to whom it is presented may inquire into the circumstances of the case and, in accordance with his notions of policy, of expediency, of propriety, or of the merits of the demand, refuse to grant it, is open to the following objections: (1) It is inconsistent with the mandatory provision of the Constitution, that a person charged in any State with treason, felony, or other crime, who shall flee from justice and be found in another State, “shall, on demand of the executive authority of the State from which he fled, be delivered up.”<sup>3</sup> (2) It is inconsistent with the positive terms of the act of 1793, which was a “contemporary construction” of the constitutional provision.<sup>4</sup> (3) It involves the exercise by the executive of one State of a supervision over the criminal procedure of other States. (4) It violates that clause of the Constitution which requires that “full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State.”<sup>5</sup> (5) By rendering

<sup>1</sup> *In re Perry*, 2 Crim. L. Mag. 84.

<sup>2</sup> Philadelphia Times, July 23, 1889; Washington Post, August 6, 1889; New York World, August 12, 1889.

<sup>3</sup> *Supra*, §§ 607, 608.

<sup>4</sup> *Roberts v. Reilly*, 116 U. S. 80.

<sup>5</sup> Art. 4, section 1. It should not be forgotten that the clause requiring the

nugatory the specific provision that fugitives from justice shall be given up, it destroys one of the methods by which the framers of the Constitution sought to "establish justice," — one of the declared general purposes of that instrument. (6) It admits the consideration of the question of criminality, in violation of the Constitution and the act of Congress, which only require that the fugitive shall be duly charged with crime. (7) It enfeebles the administration of justice by rendering it uncertain, in that it substitutes for a rule of law the will or caprice of an individual.<sup>1</sup> (8) It permits the authorities of the demanding State to be put upon trial on a charge of bad faith. (9) In opening the way to impeachment of motives and the attribution of dishonesty of purpose, it gives rise to recriminations, creates resentments and fosters ill-will, and thus prevents the realization of that "more perfect Union," which the Constitution was designed to secure.<sup>2</sup> (10) For the reason that it substitutes will for law, admits an inquiry into motives, and puts the demanding authorities on trial, it renders the relations of the States in respect to the delivery up of offenders less intimate and desirable than those of independent and foreign nations bound by treaty.

§ 618. **Surrender not obligatory where Fugitive is held on Criminal Charge.** — The case of *Taylor v. Taintor*,<sup>3</sup> before the Supreme Court of the United States in 1872, has sometimes been cited to sustain the view that rendition is discretionary.<sup>4</sup> If this had been so, it would have overruled the case of *Kentucky v. Denison*, which has nevertheless twice been cited as an authority by the Supreme Court<sup>5</sup> since the case of *Taylor*

delivery up of offenders is in section 2 of the same article, and forms part of the general system.

<sup>1</sup> "Every man hath his own particular point of view, and, at different times, sees the same objects in very different lights. The spirit of the laws will then be the result of the good or bad logic of the judge; and this will depend on his good or bad digestion, on the violence of his passions, on the rank or condition of the accused, or on his connections with the judge, and on all those little circumstances which change the appearance of objects in the fluctuating mind of man." *Beccaria on Crimes*, Ingraham's Translation, 2d ed., p. 23.

<sup>2</sup> *Supra*, § 613.

<sup>3</sup> 16 Wall. 366, 370.

<sup>4</sup> *Supra*, § 613.

<sup>5</sup> *Ex parte Reggel*, 114 U. S. 642; 1884. *Roberts v. Reilly*, 116 U. S. 80: 1885.

*v. Taintor.* It is thought that an examination of what was actually decided in this case will show that it is not an authority for the theory of discretion. The facts are as follows: Taintor, the defendant in error, brought suit as Treasurer of the State of Connecticut against Taylor and other persons on a recognizance into which they had entered for the appearance of one McGuire to answer a criminal charge. After his release on bail McGuire went into the State of New York, where he was arrested on a requisition of the governor of Maine, and surrendered to the authorities of that State on a charge of burglary. When the time came for his trial in Connecticut he was still in custody in Maine on that charge. Taintor thereupon brought suit and obtained judgment upon the recognizance in the superior court of Fairfield county, Connecticut, and this judgment was affirmed by the supreme court of that State. The case was then brought on a writ of error before the Supreme Court of the United States.

The opinion of a majority of the court was delivered by Mr. Justice Swayne, who held that the surrender of McGuire by the governor of New York was not an act of the law which released the sureties in Connecticut. In arguing this point he adverted to the fact that McGuire, if he had remained in Connecticut, would probably not have been given up, being charged with crime in that State, and in this relation said:—

“Where a demand is properly made by the governor of one State upon the governor of another, the duty to surrender is not absolute and unqualified. It depends upon the circumstances of the case. If the laws of the latter State have been put in force against the fugitive, and he is imprisoned there, the demands of those laws may first be satisfied. The duty of obedience then arises, and not before. In the case of Troutman, cited *supra*, the accused was imprisoned in a civil case.<sup>1</sup> It was held that he ought not to be delivered up until the imprisonment had legally come to an end. It was said that the Constitution and law refer to fugitives at large, in relation to whom there is no conflict of jurisdiction.”

The statement that the duty to surrender is not absolute and unqualified, but depends upon the circumstances of the case,

<sup>1</sup> *Infra*, § 619.

when considered in connection with the facts before the court and the qualification actually laid down, does not affect the general rule that the duty to surrender is absolute. The refusal to surrender a person who is under a criminal charge in the State upon which the demand is made is not an exercise of discretion in the usual sense, but merely the assertion of a universal principle wholly consistent with the imperative provisions of the Constitution. Those provisions, being intended to promote justice, but not to prefer the justice of one State to that of another, should be construed in accordance with that principle. The case of a person held on criminal process in the State in which he is found, and from which his surrender is demanded, should be regarded as *casus omissus*. It could not have been intended, for example, that a person held in one State on a charge of murder should be delivered over on demand to the authorities of another State on a charge of larceny. It should rather be said that the "discretion" of the governor in such a case consists in the exercise of the power, if he possesses it, to surrender the person demanded, notwithstanding that he is in custody on criminal process.<sup>1</sup> By the Massachusetts statute of 1834 it was provided that if the person demanded was in custody in that State, the governor should issue his warrant at such time as he deemed conducive to justice.<sup>2</sup> This provision was based upon the sound principle that compliance with the demand was not to be refused, but only suspended, so long as the interests of justice, growing out of the detention of the person in Massachusetts, required.

A person held on a rendition warrant cannot object that he has also committed an offence against the laws of the State from which he is ordered to be delivered up, since that State may choose to waive the exercise of its jurisdiction. This rule applies where the acts for which the surrender of the fugitive is granted are alleged to involve an offence against the laws of both States.<sup>3</sup> If a person is surrendered while under

<sup>1</sup> It has been suggested that the proper course in such a case is for the governor to issue his warrant and let the courts detain the prisoner. 13 Am. L. Rev. 238-239.

<sup>2</sup> *Supra*, § 612.

<sup>3</sup> *Roberts v. Reilly*, 116 U. S. 80.

recognizance to answer for an offence in the State in which he is found, it releases his bail.<sup>1</sup>

§ 619. **Question as to Civil Actions.**—Some of the State laws authorize a refusal to surrender when the person demanded is in custody or on bail to answer in a civil action. This is not in accordance with the rule that publicists generally lay down in extradition,<sup>2</sup> or with that applied within a State in case of conflict between criminal and civil actions. The general opinion of writers on the subject is that expressed by the supreme court of California in *Ex parte Rosenblat*.<sup>3</sup> Rosenblat was arrested on a warrant charging him with being a fugitive from the justice of the State of New York. While held on this warrant, an order was issued for his arrest in a civil suit. The sheriff attempted to serve this order, but the chief of police of San Francisco, who held the prisoner in custody, refused to surrender him. Subsequently the governor of California issued a warrant for his surrender, and the prisoner applied for discharge on *habeas corpus* on several grounds, one of which was that he could not be delivered up to answer for an offence in New York while an order for his arrest in a civil action was pending in California. The court held that the same principle applied in rendition proceedings between States as in proceedings within the State, and that the interest of the private suitor must yield to the paramount interest of the people of the State. A different rule, however, was laid down by the supreme court of New Jersey in the Matter of Troutman,<sup>4</sup> in 1854. Troutman was in the custody of the sheriff of Monmouth county, New Jersey, on a *capias ad respondendum*, when a warrant for his rendition was issued by the governor of that State, in compliance with a demand of the governor of Pennsylvania. Troutman was then brought before Potts, J., at chambers, on *habeas corpus*, in order that he might be discharged from detention on the civil process and delivered up as a fugitive. When, however, he was brought up on the writ of *habeas corpus*, it was discovered that the agent of Pennsylvania, learn-

<sup>1</sup> State v. Allen, 2 Humph. 258.

<sup>3</sup> 51 Cal. 285.

<sup>2</sup> *Supra*, § 370.

<sup>4</sup> 4 Zab. 634.



ing that he was in custody, had declined to demand him, and had withdrawn with the requisition and warrant. There was then really no case before the court; but in view of the fact that counsel at the bar, acting under the authority of the attorney-general of New Jersey, had intimated their dissatisfaction with the conduct of the agent, and an intention to press the requisition and demand for the delivery of the prisoner, Judge Potts stated his views at length, to the effect that "the act of Congress did not contemplate the case of a prisoner in confinement for debt or crime in the State to which he had fled, or one held in the custody of the law in a civil suit or under a criminal charge." He further declared that the general proposition that where criminal and civil proceedings come in conflict the criminal process takes preference, and that the rights of individual suitors are subordinated to the rights of the public, was applicable only within the State or sovereignty itself, and did not reach the question of interstate or national obligations and duties. He observed, however, that if the warrant on the requisition had been served first, the civil process would have been too late.<sup>1</sup> The views expressed by Judge Potts on the subject of refusal to surrender where the fugitive is under arrest or in the custody of the law on civil process have been accepted in New York.<sup>2</sup>

§ 620. **Revocation of Warrant.** — The power of a governor

<sup>1</sup> Judge Potts said that Governor Fort once issued a warrant to surrender one Smith, on a requisition from the governor of Maryland; but, ascertaining afterwards that Smith was confined in jail in Sussex county, charged with a crime committed in that county, he withdrew the warrant, and informed the executive of Maryland of the circumstances under which it was withdrawn, claiming that the fugitive must first answer to the laws of the jurisdiction which had him in custody, before he should be delivered up to the State from which he fled.

<sup>2</sup> *Matter of Briscoe*, 51 How. Pr. 422. In the case of *Ulman*, before Mr. Justice Westbrook, it was said "that no law enables a governor of this State to abridge the legal remedies which suitors in its courts are pursuing against a party, and that consequently no duty is imposed upon the court to vacate its own order of arrest, and aid the executive mandate." Commenting on this, the *Albany Journal* said, editorially: "That the fact of a person being under arrest in a civil action would prevent his return for trial to a State where he was indicted for crime, we doubt. If such should be the case criminals would find an easy shield against the penalty of their acts, and could postpone indefinitely a trial for felony by submitting to the easy confinement of a debtor's prison." 14 *Albany L. J.* 190.



to revoke a warrant of rendition was first judicially considered in Massachusetts in 1857, and upheld by Mr. Justice Bigelow of the supreme court. The question was subsequently brought before the full court in the same case, but for technical reasons was not decided.<sup>1</sup> The subject was next considered by the supreme court of Ohio, in a case in which Governor Young, on March 10, 1877, revoked a warrant which had been issued by his predecessor, Governor Hayes. The action of Governor Young was sustained, although when taken the fugitive had been delivered into the custody of the agent of North Carolina, the demanding State. The court cited a great number of instances of the revocation of warrants under various circumstances.<sup>2</sup> In the case of one Levine, a fugitive from New York, the governor of Ohio, under the authority of the resolution of the legislature of that State of March 25, 1870,<sup>3</sup> revoked his warrant on the *ex parte* application of the fugitive, on the ground that the rendition was sought for the purpose of collecting a debt. This was done upon the advice of the attorney-general. But, upon a further showing, which established that the allegations of an ulterior purpose were not well founded, the attorney-general advised the governor to issue another warrant, which was done.<sup>4</sup> In July, 1889, Governor Taylor of Tennessee revoked a warrant which he had issued for the rendition of a fugitive from Georgia, and informed Governor Gordon, of the latter State, of the fact. Governor Gordon replied that the fugitive had been arrested and carried to Morgantown, Georgia, where before the superior court of the county he had pleaded guilty and was sentenced, before Governor Taylor's letter was written. The case appears to have been dropped.<sup>5</sup>

### 8. *Warrant of Surrender.*

§ 621. **Need not set out or be accompanied with Indictment or Affidavit.** — An opinion was intimated by the supreme

<sup>1</sup> *Wyeth v. Richardson*, 10 Gray, 240.

<sup>2</sup> *Work, agent, &c. v. Corrington*, 84 Ohio St. 64.

<sup>3</sup> 67 Ohio L. 171. *Supra*, § 614.

<sup>4</sup> 7 Am. L. Record, 627.

<sup>5</sup> *Washington Evening Star*, July 11, 1889.

court of Texas in *Ex parte Thornton*,<sup>1</sup> in 1853, that it might be necessary for the warrant of rendition to fully set forth the indictment or affidavit which accompanied the requisition. The case, however, went off on another point. In 1888 the court of appeals of Texas, having the question before it, disapproved the *dictum* in *Ex parte Thornton*, and held that the warrant need neither set out in full nor be accompanied with the indictment or affidavit, and that it was sufficient if it disclosed that the essential conditions of the law had been complied with.<sup>2</sup> Such is now the general rule.<sup>3</sup> But it has been held that if the warrant recites that the fugitive stands charged "by complaint" in the demanding State, the complaint should be produced, since a complaint is not convertible with an affidavit.<sup>4</sup>

§ 622. **Must show that Law has been complied with.** — The warrant of rendition must show that the requirements of the law have been fulfilled. These in general are: (1) That the person charged has been demanded as a fugitive from justice by the executive of the State from which he fled; (2) that the requisition was accompanied with a copy of an indictment, or an affidavit made before a magistrate; (3) that the copy of the indictment or the affidavit was duly certified as authentic.<sup>5</sup>

<sup>1</sup> 9 Tex. 635.

<sup>2</sup> *Ex parte Stanley*, 25 Tex. App. 372.

<sup>3</sup> *Com. v. Hall*, 9 Gray, 262; *State v. Richardson*, 34 Minn. 115; *Nichols v. Cornelius*, 7 Ind. 611; *Robinson v. Flanders*, 29 Id. 10; *People, ex rel., v. Donohue*, 84 N. Y. 488; *People, ex rel., v. Pinkerton*, 17 Hun, 199; *Leary's case*, 10 Ben. 197; *Ex parte Lewis*, 79 Cal. 95.

<sup>4</sup> *State v. Richardson*, 34 Minn. 115. The court said that a recital merely that the fugitive stood charged "by complaint in the county of Minnehaha, in the Territory of Dakota, with the crime" specified, was not sufficient. An affidavit is understood to be a sworn statement of facts or a deposition in writing, and to include a jurat, which means the certificate of a magistrate, showing that it was sworn to before him, including the date, and sometimes also the place. A complaint is not a convertible paper; for, though a complaint may be reduced to writing and subscribed, it need not necessarily be certified by a magistrate.

<sup>5</sup> *Matter of Clark*, 9 Wend. 212. The recitative part of the warrant, which was held to be good in this case, was as follows: —

"Whereas, it has been represented to me by the governor of the State of Rhode Island, that John L. Clark, late of Providence, in the said State, has been guilty of frauds in abstracting from the Burrilville Bank, in that State, money, notes,

§ 623. **Need not directly state that Person Surrendered is a Fugitive.** — It has been held that the warrant must recite, as a conclusion of the executive issuing it, that the person charged is a fugitive from justice, and that it is not enough that it state that the demanding executive has represented him to be such.<sup>1</sup> But it has also been held that if the warrant recite facts which show that the person arrested for surrender is a fugitive from justice, it is sufficient without directly stating that he fled from the demanding State and took refuge or was found in the State on which the demand

and bank bills, while president of said bank, in a fraudulent manner, which said acts are made criminal by the laws of that State ; and that he has fled from justice in that State, and has taken refuge in the State of New York ; and that said governor of Rhode Island has, in pursuance of the Constitution and laws of the United States, demanded of me that I should cause the said John L. Clark to be arrested and delivered into the custody of Henry G. Mumford, sheriff of the county of Providence, who is duly authorized to receive him into his custody, and convey him back to the said State of Rhode Island ; and whereas, the said representation and demand is accompanied by an affidavit taken before a justice of the peace of the said State of Rhode Island, whereby the said John L. Clark is charged with the said crime, which affidavit is certified by the said governor of Rhode Island to be duly authenticated ; you are therefore required to arrest," &c. In *In re Doo Woon*, 18 Fed. Rep. 898, Judge Deady said that the warrant must bear on its face the evidence that it was duly issued, and therefore, unless it recited or set forth the indictment or affidavit upon which it was founded, it was illegal and void. In support of this declaration he cited *Ex parte Smith*, 3 McLean, 121, and *Ex parte Thornton*, 9 Tex. 635. The first branch of the declaration is sustained by the authorities. But if Judge Deady intended to hold that the warrant must set out or be accompanied with the indictment or affidavit, his decision constitutes a departure from the general rule. The case before him, however, did not call for such a decision, since the warrant did not show that the requisition was accompanied with a copy of an indictment or with an affidavit. The case of *Ex parte McLean* does not decide that the indictment or affidavit must accompany the warrant of rendition, because in that case the affidavit did accompany the warrant. The *dictum* of the court in *Ex parte Thornton* has been disapproved by the court of appeals of Texas in *Ex parte Stanley*, 25 Tex. App. 372. In *Kingsbury's case*, 106 Mass. 223, and *Brown's case*, 112 Id. 409, the warrants merely stated that the fugitives were "charged" conformably to law, and were held good. The same thing was distinctly held in *Com. v. Hall*, 9 Gray, 262. What was really decided in *Ex parte Thornton* was that the warrant must show the fact, or state it, that the requisition was accompanied with the evidence required by the act of Congress, viz., a copy of an indictment or an affidavit before a magistrate.

<sup>1</sup> *In re Jackson*, 2 Flippin, 183. See also 12 Am. L. Rev. 602 ; also *infra*, § 640.

was made.<sup>1</sup> In Kingsbury's case,<sup>2</sup> before the supreme court of Massachusetts, the recital in the warrant was as follows: "Whereas, application has been made to me by the supreme executive authority of the State of Maine, for the delivery of Drusilla P. Kingsbury, of Boston, charged with the crime of larceny, and represented to be a fugitive from the justice of the said State of Maine, and now in one of our said counties, and I am satisfied that the demand is conformable to law and ought to be complied with; I do, therefore," &c. The court said: "It [the warrant] contains a general recitation of the requisition, and that he is satisfied that the demand is conformable to law and ought to be complied with. This meets all the requirements of the statutes. It is not necessary that the guilt of the alleged fugitive should be inquired into. It is sufficient that the crime of larceny has been properly charged, and that the prisoner is a fugitive, and a requisition has been properly made." In Brown's case,<sup>3</sup> before the supreme court of Massachusetts, Gray, C. J., in 1873, the rendition warrant recited that the relator was "represented to be a fugitive from the justice of" the State of Vermont. The charge was selling intoxicating liquors contrary to the laws of Vermont, and no objection appears to have been taken to the manner of reciting the fact that the person charged was a fugitive from justice. In the Matter of Romaine,<sup>4</sup> before the supreme court of California in 1853, the court said that the rendition warrant must show the following facts: "1st, That the persons are charged in some State or Territory of the United States with treason, felony, or other crime; 2d, that they have fled from justice; 3d, that they are found in this State; and 4th, that the executive authority of the Territory from which they fled had demanded their delivery, to be removed to the Territory having jurisdiction of the crime." The warrant before the court was held to be defective in that it merely stated that the persons arrested were "charged with the crime of murder and highway robbery in the Territory of Idaho," and that a requisition had been

<sup>1</sup> *Ex parte Stanley*, 25 Tex. App. 372.

<sup>3</sup> 112 Mass. 409.

<sup>2</sup> 106 Mass. 223.

<sup>4</sup> 23 Cal. 585.

made by the acting governor of the Territory for their arrest and delivery. There was no statement in the warrant that they had fled from justice or that they were found in California. The court, however, refused to discharge the prisoners because, accompanying the return to the writ of *habeas corpus* were certified copies of the original affidavit, and of the requisition of the acting governor of Idaho issued thereon, which were not controverted, and supplied the omission. It would seem that where the warrant recites that the person charged was represented to be a fugitive from justice, the fact of the issuance of the warrant is evidence of an affirmative executive judgment on that point.<sup>1</sup>

§ 624. **As to showing that Person Surrendered is charged with Crime.** — In *Ex parte* Butler,<sup>2</sup> before the court of common pleas of Luzerne county, Pennsylvania, it was held that the warrant of the governor of Pennsylvania for the rendition of a person charged with obtaining money by false pretences in New Jersey was insufficient because it failed to show on its face that such an act was a crime by the laws of the latter State. This ruling was not sustained by the authorities. The supreme court of Massachusetts, in Brown's case,<sup>3</sup> held that it was enough on this point that the warrant of the governor recited that an application had been made to him by the supreme executive authority of the State of Vermont, for the delivery of Brown, "charged with the crime of selling and furnishing intoxicating liquors contrary to the laws of Vermont." In Butler's case the warrant of the governor of Pennsylvania stated that it had been represented to him by the governor of New Jersey, that said Butler stood "charged with the crime of obtaining money under false pretences, committed in the county of Passaic;" and recited that the requisition was accompanied with an indictment, duly certified as authentic. In Brown's case the court declare that "the question is not whether the statement in the warrant would be sufficient in an indictment to put the prisoner upon trial in the State from which he fled, but whether it shows

<sup>1</sup> See *infra*, § 640.

<sup>2</sup> *Ex parte* Butler, 18 Alb. L. J. 369; 1878.

<sup>3</sup> 112 Mass. 409. *Supra*, § 623.

that he has been charged with a crime against the law of that State; and for that purpose. the general description in this warrant is sufficient." In Leary's case the court held that the warrant of the governor was conclusive evidence that the party named therein stood charged with crime in the State from which he fled.<sup>1</sup> In *In re Hooper*,<sup>2</sup> before Cole, J., of the supreme court of Wisconsin, at chambers, in June, 1889, the prisoner was detained on a warrant issued by the governor of Wisconsin, in compliance with a requisition of the governor of Kansas. The warrant of the governor of Wisconsin recited that it had been represented to him by the governor of Kansas that the petitioner "stands charged with the crime of obtaining illicit connection with a female of good repute under the age of twenty-one years, under a promise of marriage, committed in the county of Labette in said State, and that he has fled from justice in that State, and has taken refuge in the State of Wisconsin; and the said governor of Kansas having, in pursuance of the Constitution and laws of the United States, demanded," &c. It was objected that this warrant did not show that the relator was charged with a crime for which the executive was authorized to cause him to be arrested and surrendered. The court said:—

"*Prima facie* the warrant shows that the act charged was a crime by the laws of Kansas. Besides, in the absence of proof to the contrary, the presumption is that the laws of that State are the same as our own. Our statute makes the seduction of an unmarried female of previous chaste character, under a promise of marriage, an offence punishable by imprisonment in the State prison (sec. 4581, R. S.); and that is substantially the offence charged in the warrant."

The court also observed that it was sufficient if the act was criminal only by the law of the demanding State. It was held by the court of appeals of Texas in *Ex parte Stanley*,<sup>3</sup> in 1888, that the rendition warrant need not show that the

<sup>1</sup> 10 Ben. 197.

<sup>2</sup> 52 Wis. 699.

<sup>3</sup> 25 Tex. App. 372.

act charged is a crime against the laws of the demanding State. In the Matter of Clark,<sup>1</sup> it was contended that no crime had been committed, and that the proceedings contemplated by the Rhode Island statute were of a civil nature merely, and in proof of this the statute was read "informally." The court, Savage, C. J., said: "The first answer is that the statute of Rhode Island is not properly before us. An offence of a highly immoral character is stated in the warrant, and is certified by the governor of Rhode Island to have been made criminal by the laws of that State. This is evidence enough, in this stage of the proceedings, of the nature of the offence."

§ 625. **Various Points.** — The act of 1793 (§ 5278 R. S.) requires the demanding executive to produce "a copy of an indictment found, or an affidavit made before a magistrate of any State or Territory, charging the person so demanded," &c. In *Ex parte Powell*,<sup>2</sup> in 1884, it was held that where a warrant of arrest and rendition recited only that the demanding executive produced and authenticated "a copy of affidavits charging" the commission of the crime, but did not show that they were made before a magistrate or judicial officer, it could not be presumed that the affidavits were made in the course of judicial proceedings for the prosecution of the person demanded, and that the warrant upon its face failed to disclose that it was authorized by law. This was on an appeal from the decision of a lower court on a writ of *habeas corpus*. The act of Congress does not require the rendition warrant to be directed to any particular officer.<sup>3</sup> A recital in the rendition warrant that the demand of the governor of the demanding State "was accompanied by a copy of said affidavit duly certified as authentic" is equivalent to a recital that the copy was certified as authentic by the governor of that State.<sup>4</sup> The word "take" in a warrant of rendition is equivalent to the word "arrest."<sup>5</sup> In the warrant of ren-

<sup>1</sup> 9 Wend. 212; *supra*, §§ 609, 623, n.

<sup>2</sup> 20 Fla. 806.

<sup>3</sup> *Robinson v. Flanders*, 29 Ind. 10.

<sup>4</sup> *Ex parte Stanley*, 25 Tex. App. 372.

<sup>5</sup> *Com. v. Hall*, 9 Gray, 262.



dition the fugitive was called James Draper, the name by which he was indicted. There was evidence that his real Christian name was Thomas. But the court said that, taking the whole evidence together, it thought it had been correctly determined that the prisoner was the person intended to be given up, and this was sufficient.<sup>1</sup> Where a State statute required the warrant to be under seal, it was held that an impression so indistinct as to be unintelligible was insufficient, and on that ground the warrant was declared to be void and the prisoner discharged.<sup>2</sup> One of the judges, whose vision seems to have been clearer than that of the rest of the court, dissented, saying that, while the impression was faint, there was enough to his eye to satisfy his mind that it was the great seal of the State.

§ 626. **Issuance of new Warrant.** — Where a warrant of rendition was held on *habeas corpus* to be insufficient, the governor revoked it and issued a new one on the same requisition, which had also been held to be defective on the hearing. A second writ was refused on the ground that the record before the court did not show the first cause of arrest.<sup>3</sup> The principle of *res judicata* does not apply to a case where a fugitive is arrested a second time on a second warrant issued for his rendition, though the offence charged is the same in both warrants.<sup>4</sup> Nor is it any objection to the issuance of a second warrant that the fugitive has already been once surrendered for the offence charged, and has returned to the surrendering State after being admitted to bail in that from which he fled. "It may be," said the court, "that had this prisoner been discharged for want of prosecution, it would be in the discretion of the governor to refuse to order his arrest a second time; but where a recognizance is taken, and the prisoner fails to appear, the power of the governor to order a second arrest cannot be questioned."<sup>5</sup>

<sup>1</sup> *People, ex rel., v. Pinkerton*, 17 Hun, 199.

<sup>2</sup> *Vallad v. Sheriff*, 2 Mo. 26.

<sup>3</sup> *Ex parte Powell*, 20 Fla. 806.

<sup>4</sup> *Kurtz v. State*, 22 Fla. 36.

<sup>5</sup> *In re Hughes, Phillips' (N. C.) Law*, 57.



§ 627. **Agent.** — The agent to receive the fugitive and convey him to the place of trial is appointed by the demanding executive. It is contemplated by the act of Congress that he should be so appointed. His expenses, as well as all other costs of the proceeding, are paid by the demanding State.<sup>1</sup> In the performance of his duty he is given certain powers and is protected by the laws of the United States.<sup>2</sup> He is not, however, regarded as an officer of the national government,<sup>3</sup> nor, where he acts beyond the authority conferred by act of Congress, is he to be considered as acting pursuant thereto.<sup>4</sup> The recognition of the authority of the agent by the executive of the State on which the demand is made, by directing the delivery of the fugitive to him, sufficiently establishes such authority in that State.<sup>5</sup> An agent acting within the scope of his duty is not liable to an action for false imprisonment, and the question of his motives is in such case immaterial;<sup>6</sup> nor is he so liable where he transports the fugitive without unreasonable delay.<sup>7</sup> But it was held in Georgia that an agent was liable to such an action where he arrested a person on a warrant of rendition improperly issued.<sup>8</sup> Judge Bradley, of the supreme court of the District of Columbia, in a decision rendered on August 25, 1890, treated it as an evidence of abuse of process and a ground for discharge on *habeas corpus*, that a person held on a warrant of rendition, issued by the chief justice of the District, instead of being conducted to the Territory of Utah, from which the demand emanated, was for several days detained in various places of incarceration in and out of the District.<sup>9</sup>

<sup>1</sup> § 5278, R. S.

<sup>2</sup> § 5279, R. S.

<sup>3</sup> *Robb v. Connolly*, 111 U. S. 624 ; *In re Mohr*, 73 Ala. 503.

<sup>4</sup> *In re Bull*, 4 Dill. 323.

<sup>5</sup> *Nichols v. Cornelius*, 7 Ind. 611.

<sup>6</sup> *Matter of Titus*, 8 Ben. 411 ; *In re Burke*, St. Paul and Minneapolis Pioneer Press, January 25, 1879.

<sup>7</sup> *Pettus v. Georgia*, 42 Ga. 358.

<sup>8</sup> *Johnston v. Riley*, 13 Ga. 97.

<sup>9</sup> *Washington Evening Star*, August 25, 1890.

## CHAPTER VII.

## HABEAS CORPUS.

1. *Power to Issue.*

§ 628. **Early Doctrine.**—In an article in the Pennsylvania Law Journal in 1847,<sup>1</sup> in relation to the surrender of criminals as between the States, we find the following statement: "There being no revisory tribunal by which executive action under these provisions can be controlled, very great irregularity in practice has arisen. With the exception of one or two decisions of individual judges sitting on *habeas corpus*, the only authorities bearing on the question are the opinions emanating from the executives of particular States in cases of collision." In Sergeant's Constitutional Law<sup>2</sup> we find a statement of an old case, entitled *Ex parte Willard and Wife*, decided by Judge Ray of South Carolina, in which it was held that the court had no authority to discharge on *habeas corpus* persons held in custody on a warrant of the governor of South Carolina for rendition to the State of New York, on a requisition of the governor of that State charging bigamy. The court held that the matter was exclusively of executive cognizance, and as such was by the operation of the Constitution and laws of the United States excepted out of the *habeas corpus* act. In course of time, however, and especially after the case of *Ex parte Smith*,<sup>3</sup> in 1842, the courts began to grant writs with much frequency, until at length the practice became firmly established; and in many of the States express provision is made for the issuance of writs of *habeas corpus* in interstate cases. It was held by Judge Bradley, of the supreme court of the District of Columbia, in the case of one Bulliss, on August 25, 1890, that he had jurisdiction to grant

<sup>1</sup> P. 412.<sup>2</sup> P. 395.<sup>3</sup> 3 McLean, 121. See in this relation 18 Am. L. Rev. 136, 690.

a writ of *habeas corpus* to inquire into the legality of the detention of the relator, who was in the custody of the agent of the Territory of Utah on a warrant of surrender issued by the Chief Justice of the same court acting as chief executive of the District.<sup>1</sup>

§ 629. **Federal Courts.**—The power of the courts of the United States to issue writs of *habeas corpus* in cases of interstate rendition has since the case of *Ex parte* Smith, in 1842, frequently been exercised. The prisoner being delivered up under the Constitution and laws of the United States, he is held in custody under color of authority derived therefrom, and is entitled to invoke the judgment of the judicial tribunals of the United States as to the legality of his detention.<sup>2</sup> But where a person who assumed to act as the agent of a State, instead of taking the fugitive to the demanding State, carried him away to a foreign country, and was subsequently indicted for kidnapping, on his return to the State on which the demand was made, Judge Dillon refused to issue a writ of *habeas corpus* to take him out of the custody of the State court. He said that the relator could not, under the circumstances, be held to have been acting pursuant to sections 5278 and 5279 of the Revised Statutes of the United States, and that a prisoner should not be discharged by a Federal court from the custody of a State court, unless it clearly appeared that he was held for an act done in pursuance of Federal authority and warranted by it.<sup>3</sup> The Supreme Court of the United States cannot take jurisdiction of a certificate of division in opinion between the judges of a circuit court in proceedings under a writ of *habeas corpus*, until entry of final judgment.<sup>4</sup> Section 763 of the Revised Statutes, which provides for an appeal in cases of *habeas corpus* to the circuit court from the final decision of the dis-

<sup>1</sup> Washington Evening Star, Aug. 25, 1890. *Supra*, §§ 627, 584.

<sup>2</sup> *Roberts v. Reilly*, 116 U. S. 80; *In re* Roberts, 24 Fed. Rep. 132; *In re* Robb, 19 Id. 26; *In re* Doo Woon, 18 Id. 898; *Ex parte* Morgan, 20 Id. 298; *Matter of Titus*, 8 Ben. 411; *Leary's case*, 10 Id. 197.

<sup>3</sup> *In re* Bull, 4 Dill. 323. This case arose out of the kidnapping of Blair, *supra*, § 191, Bull being the agent.

<sup>4</sup> *Ex parte* Clodomiro Cota, 110 U. S. 385; *Ex parte* Tom Tong, 108 Id. 556.

strict court, does not require it to be taken, as in ordinary cases at law or suits in equity or admiralty, to the next term of the circuit court. The subject is regulated by section 765, and the appeal may within the discretion of the court or judge be sent to the circuit court at a current term, under regulations and orders adapted to secure justice.<sup>1</sup>

§ 630. **Jurisdiction of Federal Courts not exclusive.** — In the matter of Titus,<sup>2</sup> in 1876, Judge Benedict, in the United States district court, Eastern District of New York, expressed the view that the power to issue writs of *habeas corpus* in interstate rendition cases was exclusively vested in the Federal courts. This view was adopted by Judge Sawyer, in the United States circuit court, District of California, in the case of Robb,<sup>3</sup> in January, 1884. The facts in the case are that W. L. Robb, agent of the State of Oregon, held in custody one Bayley, who had been delivered up to him on a warrant of rendition issued by the governor of California upon a requisition of the governor of Oregon. While so held, Bayley obtained from the judge of the superior court of the city and county of San Francisco a writ of *habeas corpus*, which Robb refused to obey on the ground that he held Bayley under the authority of the United States, and that the superior court consequently had no power or authority to proceed in the matter. The superior court thereupon declared Robb in contempt, and he was arrested. He then obtained a writ of *habeas corpus* from the supreme court of California, which held that the superior court had power to issue the writ and that the refusal to obey it was contempt of court.<sup>4</sup> Meanwhile, Robb obtained a writ of *habeas corpus* from Judge Sawyer, and was discharged.<sup>5</sup> In order, how-

<sup>1</sup> *Roberts v. Reilly*, 116 U. S. 80.

<sup>2</sup> 8 Ben. 411.

<sup>3</sup> *In re Robb*, 19 Fed. Rep. 26.

<sup>4</sup> *In re Robb*, 64 Cal. 431 ; 1 W. C. R. 255.

<sup>5</sup> This decision is criticised in 29 Alb. L. J. 206.

The syllabus of Judge Sawyer's decision is as follows : —

“ FUGITIVES FROM JUSTICE ARRESTED AND RETURNED UNDER LAWS OF THE UNITED STATES. — The governor of a State in issuing a warrant for the arrest of a fugitive from justice, the officer who makes the arrest, and the party commissioned to receive the fugitive and deliver him to the authorities of the State

ever, to test the judgment of the supreme court of California, Robb obtained a writ of error to that court from the Supreme Court of the United States. This court, Mr. Justice Harlan delivering the opinion, decided that the State courts had jurisdiction. The court held that Robb, while performing a duty under the Constitution and laws of the United States, was nevertheless an officer of the State of Oregon and not of the United States; and said that "the authority of a State court, or of one of its judges, upon writ of *habeas corpus*, to pass upon the legality of the imprisonment, within the territory of that State, of a person held in custody — otherwise than under the judgment or orders of the judicial tribunals of the United States, or by the order of a commissioner of a circuit court, or by officers of the United States acting under their laws — cannot be denied merely because the proceedings involve the determination of rights, privileges, or immunities

where the offence is charged to have been committed, in pursuance of the provisions of sections 5278 and 5279 of the Revised Statutes of the United States, act under the authority of the laws of the United States, and *pro hac vice* are officers or agents of the United States.

"WRIT OF HABEAS CORPUS; JURISDICTION. — Where a petition for a writ of *habeas corpus* presented to a State judge or court by a party in the custody of one claiming, in good faith, to be authorized to deliver him to the authorities of another State, as a fugitive from justice, in pursuance of the provisions of said sections, shows upon its face that the petitioner is so held in custody, under such claim made in good faith, the State judge or court has no jurisdiction to issue the writ. The jurisdiction, in such case, is exclusively in the courts of the United States.

"ID.; DUTY OF CUSTODIAN. — Where a writ of *habeas corpus* has been issued by a State judge or court, and been served on the party having the custody of such alleged fugitive, it is the duty of such custodian to make full return to the writ as to the authority under which he holds the prisoner, and to exhibit to the court the original papers evidencing his authority, and respectfully decline to produce the body of the prisoner; and if it appears from said return, or said petition and return, that the prisoner is claimed to be held in good faith, in pursuance of the provisions of said statute, the judge or court issuing the writ has no jurisdiction or authority to proceed further, and no jurisdiction or authority to compel the production of the body of the prisoner, or to commit the party holding him for contempt in thus respectfully declining to produce the prisoner.

"THE EFFECT OF THE PRODUCTION OF THE PRISONER would be to place him in the physical control of the court, and to deprive himself of all power to execute the superior commands of the laws of the United States, to which he owes obedience."

derived from the nation, or require a construction of the Constitution and laws of the United States." In conclusion the Supreme Court said: "It is proper to say, that we have not overlooked the recent elaborate opinion of the learned judge of the circuit court of the United States for the District of California, in *In re Robb*, 19 Fed. Rep. 26. But we have not been able to reach the conclusion announced by him."<sup>1</sup> The jurisdiction of the State courts is amply sustained by the authorities.<sup>2</sup>

§ 631. **Rule where courts have Concurrent Jurisdiction.** — It is a general rule that where a State court and a court of the United States may each take jurisdiction of a matter, the tribunal which first gets it holds it to the exclusion of the other, until its duty is fully performed and the jurisdiction invoked is exhausted; and this rule applies both in civil and in criminal cases.<sup>3</sup> The United States courts are not compelled to

<sup>1</sup> *Robb v. Connolly*, 111 U. S. 624. The Supreme Court reviewed the cases that are generally relied on to show that the United States courts have exclusive jurisdiction in interstate rendition cases, and declared that the question had never previously been before the court. Thus in *Tarble's case*, 13 Wall. 397, it was held that a State judge could not discharge by *habeas corpus* a person in the custody of a United States recruiting officer as an enlisted soldier. A similar decision was made by the supreme court of Alabama, which, during the days of the Confederacy, granted a writ of prohibition to an inferior court to restrain it from granting a writ of *habeas corpus* to discharge a conscript from the custody of an enrolling officer of the Confederate government. *Ex parte Hill*, 38 Ala. 429. A decision to the same effect was made in *Ex parte Lee & Allen*, 39 Ala. 457. In *Passmore Williamson's case*, 26 Pa. St. 9, the supreme court of Pennsylvania refused to grant a writ of *habeas corpus* to release a prisoner in confinement under an order of a United States court for contempt. In *Ex parte Le Bur*, 49 Cal. 159, the supreme court of California refused to discharge a person who had been convicted in a United States court of robbing the United States mails. Although he was confined in a State prison, with the consent of the State, it was held that his offence was exclusively against the United States, and that he was to be deemed as being in the custody of the Federal authorities. These cases are all different from that of a person in the custody of an agent of a State for an offence against State laws, although he may have been delivered up in pursuance of the Constitution and laws of the United States.

<sup>2</sup> *Roberts v. Reilly*, 116 U. S. 80; *In re Roberts*, 24 Fed. Rep. 132; *Ex parte Brown*, 28 Id. 653; *In re Mohr*, 73 Ala. 503; *Com. v. Hall*, 9 Gray, 262; *Ex parte Thornton*, 9 Tex. 635; *Cooley's Constit. Lim.* (5th ed.) 16, note 1; *Wharton's Cr. Pl. & Pr.* § 35.

<sup>3</sup> *Taylor v. Taintor*, 16 Wall. 366, 370; *United States v. Rauscher*, 119 U. S. 407.

wait until the State tribunal has exhausted its jurisdiction,<sup>1</sup> but it is proper to do so unless strong reasons to the contrary exist.<sup>2</sup> And although the judgments of the State courts do not conclude the Federal tribunals, they are entitled to great respect and are strongly advisory.<sup>3</sup>

## 2. Questions which may be considered.

§ 632. **Conflict of Opinion.** — Under the writ of *habeas corpus* the courts have no power to inquire as to the guilt or innocence of the fugitive, but only as to the legality of his detention.<sup>4</sup> They have no larger powers than the governor in respect to the question of criminality.<sup>5</sup> To what extent, however, the inquiry into the legality of the detention may be carried, the courts are by no means agreed. Where it was contended that the relator was detained without probable cause, the court said that a requisition and warrant, founded on an indictment, were sufficient cause for detention.<sup>6</sup>

§ 633. **Identity.** — The question of the identity of the person in custody with the person named in the rendition warrant is always open to inquiry on *habeas corpus*.<sup>7</sup> This is a different question from whether the fugitive is the person who committed the crime charged in the warrant. The latter is a question of *alibi*, and is to be tried by the courts of the demanding State, as a matter of defence.<sup>8</sup> It is only necessary that actual identity between the person held and

<sup>1</sup> Leary's case, 10 Ben. 197.

<sup>2</sup> *Ex parte* Royall, 117 U. S. 241.

<sup>3</sup> *In re* Roberts, 24 Fed. Rep. 132.

<sup>4</sup> *In re* Roberts, 24 Fed. Rep. 132; *Ex parte* Swearingen, 13 S. C. 83; *In re* Mohr, 73 Ala. 503; *Hibler v. State*, 43 Tex. 197; *People v. Brady*, 56 N. Y. 182; *Robinson v. Flanders*, 29 Ind. 10; *In re* Clark, 9 Wend. 212.

<sup>5</sup> *Wilcox v. Nolze*, 34 Ohio St. 520. "Cincinnati, Ohio, Sept 24. — In deciding upon the case of Charles Van Vleck, an alleged fugitive from justice, for whom the governor of Pennsylvania issued a requisition, Judge Longworth yesterday decided that he had no right to inquire into the guilt or the innocence of the accused, but only to determine the legality of the process, and whether he is in truth the party described." N. Y. Times, Sept. 25, 1878.

<sup>6</sup> *Robinson v. Flanders*, 29 Ind. 10.

<sup>7</sup> Leary's case, 10 Ben. 197; 6 Abb. N. C. 43, 68; *State v. Daniels*, 6 Pa. L. J. 417.

<sup>8</sup> *Robinson v. Flanders*, 29 Ind. 10.



the person named in the warrant be established. Hence where evidence was produced to show the relator's real name was "Thomas," and not "James," the name stated in the warrant and indictment, the court held it sufficient that the evidence established that the person in custody was the person intended to be given up.<sup>1</sup>

§ 634. **Warrant of Surrender held to be conclusive.** — It has been seen that the warrant of rendition must show on its face that the statutory conditions have been complied with.<sup>2</sup> As to how far inquiry may be made by *habeas corpus* into any question determined by the executive issuing such warrant, the courts are not agreed. It was held by Chief Justice Booth, of Delaware, in 1846, that the warrant of the executive under the great seal of the State, reciting the facts necessary under the act of Congress to give him jurisdiction, would at the hearing of the *habeas corpus* be conclusive evidence of the existence of those facts, of his judgment in relation to them, and of a compliance with the Constitution of the United States and the act of Congress. These views Chief Justice Booth consistently carried out in the case before him. The facts are that one Adams was arrested in Delaware on a warrant issued by the mayor of the city of Wilmington on a complaint on oath made before him, charging Adams with the commission of a larceny in Pennsylvania. When arrested, Adams was committed to jail in Wilmington to await a requisition of the governor of Pennsylvania, which had not been made. While thus in custody he was discharged by Chief Justice Booth on *habeas corpus*, on the ground that the facts stated in the complaint did not constitute the crime of larceny, but only a breach of trust.<sup>3</sup> Subsequently, Adams was rearrested on a warrant issued by the governor of Delaware in compliance with a requisition of the governor of Pennsylvania, charging the crime of larceny. He again applied to

<sup>1</sup> *People v. Pinkerton*, 17 Hun, 199. The court of appeals subsequently held in the same case, *People v. Pinkerton*, 77 N. Y. 245, that the decision of the supreme court on the question of identity was not reviewable.

<sup>2</sup> *Supra*, § 622.

<sup>3</sup> *State v. Buzine*, 4 Harr. 572.

Chief Justice Booth for discharge on *habeas corpus*. The agent of the State of Pennsylvania, who held Adams in custody, made return of the rendition warrant and of a copy of the requisition of the governor of Pennsylvania. Accompanying the requisition was a certified affidavit made before a magistrate in that State, charging the commission of substantially the same acts as those that had previously been held by Chief Justice Booth not to constitute the offence of larceny, but only a breach of trust. But the Chief Justice held the warrant of rendition, which recited compliance with all the legal requisites, to be conclusive, and remanded the prisoner into custody, saying that he could obtain relief by *habeas corpus* when taken to Pennsylvania, if the circumstances of his case entitled him to it. The prisoner was accordingly remanded and taken to Pennsylvania, where he was discharged on *habeas corpus* on the ground that the acts alleged constituted merely a breach of trust.<sup>1</sup> It was held by the judge of the 12th judicial district of Kentucky, in 1847, that the only ground on which a fugitive could seek relief on *habeas corpus* after arrest on a warrant of rendition, was proof of non-identity.<sup>2</sup> The same view was taken by the supreme court of Vermont, in 1858.<sup>3</sup> It was held by the supreme court of Indiana, in 1856, that the recital in the rendition warrant of compliance with the necessary conditions made at least a *prima facie* case, which could not be attacked by exceptions, but only by answer.<sup>4</sup> It was held by the same court, in 1879, that the prisoner being in custody on a rendition warrant, it was not competent for the court to pass upon the sufficiency of the affidavit charging the crime under the laws of the State where it was filed, such laws not being before the judge at the hearing of the writ.<sup>5</sup> It has been held by the supreme court of Massachusetts that where the rendition warrant states that the requirements of the act of Congress have been complied with, though without reciting each particular one, it makes a *prima facie* case, and

<sup>1</sup> *State v. Schlemm*, 4 Harr. 577.

<sup>2</sup> 6 Pa. L. J. 417.

<sup>3</sup> *In re Greenough*, 31 Vt. 279.

<sup>4</sup> *Nichols v. Cornelius*, 7 Ind. 611.

<sup>5</sup> *Tullis v. Fleming*, 69 Ind. 15.

must in the absence of controlling proof be taken to be true.<sup>1</sup> It was held by Judge Choate, in Leary's case,<sup>2</sup> in 1879, that the court could only examine the question of identity, and perhaps the question of *constructive* flight. As to the latter, however, he intimated a serious doubt.

§ 635. **Warrant of Surrender held not to be conclusive.** — The first reported case in which a court discharged a prisoner on *habeas corpus* on the ground of the insufficiency of the evidence on which the rendition warrant was based, is that of *Ex parte Smith*,<sup>3</sup> in 1842. There the relator was discharged on the ground that the affidavit accompanying the requisition, which was before the court, did not allege or show that he was a fugitive from justice. Following the example set in *Ex parte Smith*, some of the courts have not hesitated, the papers being before them, to review the action of the governor. Thus the supreme court of California, in 1855, in the Matter of Manchester,<sup>4</sup> said that "while the courts of the State possess no power to control the executive discretion, and compel a surrender, yet, having once acted, that discretion may be examined into, in every case where the liberty of the subject is involved." The court then examined the affidavit accompanying the requisition on which the rendition warrant was based. The affidavit, however, was held to be sufficient, and the relator was remanded. And the court refused to consider evidence that the affidavit was a forgery, on the ground that the certificate of the demanding executive was conclusive as to the question of authenticity.<sup>5</sup> The ruling of the court

<sup>1</sup> Com. v. Hall, 9 Gray, 262 ; Kingsbury's case, 106 Mass. 223 ; Brown's case, 112 Id. 409 ; Davis' case, 122 Id. 324. See also Taylor v. Taintor, 16 Wall. 336, 374 ; *In re Jackson*, 2 Flippin, 183.

<sup>2</sup> 10 Ben. 197.

<sup>3</sup> 3 McLean. 121. See *Ex parte Douaghey*, 2 Pitts. L. J. 166.

<sup>4</sup> 5 Cal. 237.

<sup>5</sup> In *Ex parte Lewis*, 79 Cal. 95, April 30, 1889, it was contended that the detention of the prisoner was illegal because the warrant did not contain a copy of an indictment, or of an affidavit, duly authenticated by the demanding governor. The warrant recited that the demand was accompanied with "a complaint and information, affidavits, and warrant of arrest," &c. The court held that the recitals in the warrant were sufficient, and should be taken as true, since they were not in fact disputed.

in the Matter of Manchester has been followed in all its parts and with like results by the supreme court of Florida, in *Kurtz v. State*.<sup>1</sup> In the Matter of Romaine,<sup>2</sup> the supreme court of California supplied a defect in the warrant by resort to a certified copy of the affidavit accompanying the requisition. In the case of *Roberts v. Reilly*,<sup>3</sup> it was held by the Supreme Court of the United States that, under the act of Congress of 1793 (section 5178 of the Revised Statutes), it must appear to the governor of the State to whom the demand is presented, before he can lawfully comply with it, "that the person demanded is substantially charged with a crime against the laws of the State from whose justice he is alleged to have fled, by an indictment or an affidavit, certified as authentic by the governor of the State making the demand." This prerequisite, the court said, "is a question of law, and is always open upon the face of the papers to judicial inquiry, on an application for a discharge under a writ of *habeas corpus*." At the same time the court held that the question whether a corporation was a person capable of owning property could not be raised to test the legality of the detention of a person held on a rendition warrant based on a charge of larceny of the property of such corporation, as averred in an indictment accompanying the requisition. It was held by the Supreme Court, in a case decided in the preceding year, that questions of technical pleading could not be raised in respect to an indictment accompanying a requisition.<sup>4</sup> It has already been observed that the courts have paid less regard to affidavits than to indictments in determining whether a charge is substantially made.<sup>5</sup>

<sup>1</sup> 22 Florida, 36; 1883. See also *Ex parte Powell*, 20 Id. 806, to the effect that the judgment of the executive issuing the rendition warrant is conclusive as to whether the statutory conditions have been complied with.

<sup>2</sup> 23 Cal. 585.

<sup>3</sup> 116 U. S. 80; 1885. See also *State v. O'Connor*, 38 Minn. 243; 1888; *Davis' case*, 122 Mass. 324; *In re Voorhees*, 3 Vroom, 141; *In re Greenough*, 81 Vt. 279; *In re Clark*, 9 Wend. 212. *Supra*, §§ 634, 550, 549. *Infra*, § 640.

<sup>4</sup> *Ex parte Reggel*, 114 U. S. 642; 1884.

<sup>5</sup> *Davis' case*, 122 Mass. 324. *Supra*, §§ 549, 550. It was broadly held by Judge Handley of the court of common pleas of Luzerne county, Pennsylvania, in 1878, that so much of the Pennsylvanian statute of that year as limited the

§ 636. **Decisions in New York.** — It has been seen that in *Roberts v. Reilly*,<sup>1</sup> the Supreme Court of the United States said that the question whether the fugitive was substantially charged with a crime in accordance with the act of Congress was always open to inquiry on *habeas corpus* "upon the face of the papers." The force of this expression is illustrated by the course of judicial decision in the State of New York. In the case of *Clark*,<sup>2</sup> the court held, in accordance with the general rule, that the warrant of rendition must show upon its face that the essential requirements of the law had been met; and the warrant before the court was held to be sufficient and the petitioner remanded. In *Soloman's case*,<sup>3</sup> in 1866, Judge Russell, city judge of New York City, citing *Clark's case*, discharged the prisoner from detention on a rendition warrant, because the affidavit was not authenticated in accordance with the act of Congress. This view of the powers of the court on *habeas corpus* was followed by the court of appeals of New York in *People, ex rel. Lawrence, v. Brady*,<sup>4</sup> in 1874. The relator was arrested on a warrant issued by the governor of New York on December 8, 1873, directing his arrest and delivery to the agent of the State of Michigan, pursuant to a requisition of the governor of that State. In two applications for discharge on writs of *habeas corpus*, one to the court of oyer and terminer for the county of New York, on a writ issued by the supreme court of the State, and the other to the United States circuit court for the Southern District of New York, the writs were dismissed and the prisoner remanded, on a return by his custodian of the warrant of rendition. On January 16, 1874, upon a petition alleging the insufficiency of the requisition papers on which the warrant of the governor was issued, another writ of *habeas corpus* was allowed by Mr. Justice Lawrence of the supreme court. The sheriff made return thereto before Mr. Justice Brady, of the same court, that he held relator under

inquiry on *habeas corpus* in a rendition case to the question of identity was unconstitutional. *Ex parte Butler*, 18 Alb. L. J. 369.

<sup>1</sup> *Supra*, § 635.

<sup>2</sup> 9 Wend. 219. *Supra*, § 620.

<sup>3</sup> 1 Abb. Pr. (N. S.) 347.

<sup>4</sup> 56 N. Y. 182.

and by virtue of the warrant of the governor of New York; and with this return he set forth all the proceedings before the court of oyer and terminer, and before the circuit court of the United States. The relator traversed this return, setting forth in his answer the affidavits which accompanied the requisition; and alleging, among other things, that the affidavits were defective in not showing the nature, facts, and circumstances of the transaction therein set forth, and in not disclosing the grounds upon which were based the assertions of illegality. To this traverse the sheriff demurred. Mr. Justice Brady sustained the demurrer, dismissed the writ, and remanded the relator to the custody of the sheriff; and his proceedings were affirmed on *certiorari* by the supreme court in general term. A writ of error, to review the judgment of the latter, was issued by the court of appeals, and the judgment was reversed, the court looking into the affidavits and holding the offence not to be sufficiently charged. Grover, J., dissented. The court cited *Ex parte Smith*,<sup>1</sup> which was on the question of constructive flight, and *In re Clark*,<sup>2</sup> which related to the sufficiency of the rendition warrant on its face; neither of which, consequently, was an authority in point.

§ 637. **Withholdment of Papers by Executive in New York.**—As an antidote to the decision of the court of appeals in *People v. Brady*,<sup>3</sup> the governor of New York adopted the expedient of retaining the requisition and accompanying papers on which the rendition warrant was issued. The efficacy of this measure has since been amply demonstrated. In the Matter of Nathan Ulman,<sup>4</sup> a fugitive from the justice of Pennsylvania, held on a rendition warrant of the governor of New York, Mr. Justice Westbrook, of the supreme court of the latter State, inadvertently signed a writ of *certiorari*, which was presented to him by counsel for Ulman, directed to the governor, supposing that the *certiorari*, which was issued at the same time as a writ of *habeas corpus*, was like the

<sup>1</sup> 3 McLean, 121.

<sup>2</sup> 9 Wend. 219.

<sup>3</sup> *Supra*, § 636.

<sup>4</sup> Matter of Briscoe, 51 How. Pr. 422.

latter directed to the officer having Ulman in custody.<sup>1</sup> The writ of *certiorari* was, however, duly served upon the governor, and the papers asked for sent by his Excellency to the court, but with the following declaration: "I deny, with great respect, the right of the court to issue said writ of *certiorari* to me, or to review, directly, my action in discharging the duty imposed upon me by the Constitution of the United States with respect to the surrender of fugitives from justice." Judge Westbrook, when the facts came to his knowledge, acquiesced in the position of the governor in respect to the lack of power to compel him by writ of *certiorari* to produce the papers on which he acted; but he subsequently asserted the power to review the action of the executive, as held in *People v. Brady*, the papers being before the court, though the fugitive was not discharged.<sup>2</sup> The question was next brought up in *People, ex rel. Connors, v. Reilley*,<sup>3</sup> in 1877, before the supreme court of New York, First Department, on a *certiorari* to the court of oyer and terminer of the city and county of New York. Connors, who was in custody on a rendition warrant issued by the governor of New York, obtained from the latter court a writ of *habeas corpus*. The only return made was that of the warrant, the affidavits accompanying the requisition being withheld by the governor, who refused either to produce the originals or to allow copies to be taken. On the hearing of the writ, the court of oyer and terminer held that the only question into which it could inquire was that of the fugitive's identity with the person named in the warrant. The supreme court, on the *certiorari*, held that the court of oyer and terminer had no jurisdiction at all, for the reason that a person in custody on a rendition warrant was not a "person detained in the common jail of any such county, upon any criminal charge," within the meaning of section 27, chapter 460, act of 1847, authorizing a court of oyer and terminer to issue a writ of *habeas corpus*; and on this ground the *certiorari* and *habeas corpus* were

<sup>1</sup> 14 Alb. L. J. 67 ; July 29, 1876.

<sup>2</sup> *Matter of Briscoe*, 51 How. Pr. 422 ; 14 Alb. L. J. 189.

<sup>3</sup> 11 Hun, 94.



dismissed and the relator remanded. But Mr. Justice Davis, in delivering the opinion of the supreme court, took occasion to say that the general views expressed by the court of oyer and terminer were in conflict with *People v. Brady*, which, whether sound or not, controlled the inferior courts while it stood. Judge Choate, in Leary's case,<sup>1</sup> disapproved the decision of the court in *People v. Brady*, and adopted the opinion of the court of oyer and terminer in *People v. Reilley*. In *People v. Pinkerton*,<sup>2</sup> in 1879, the governor having again declined to produce the papers on which his warrant of rendition was issued, the supreme court considered the case on the warrant alone, and, holding it to be sufficient, remanded the prisoner into custody. This decision was affirmed by the court of appeals,<sup>3</sup> the court saying that it was not needful to determine whether the warrant was conclusive, or whether it was competent for the prisoner to prove that the papers presented to the governor were defective, since there was no offer of any such proof. In *People v. Donohue*,<sup>4</sup> in 1881, the court of appeals again affirmed the legality of the detention of the fugitive on the return of the rendition warrant alone, the executive declining to produce the papers on which he acted. The warrant recited that the requisition was accompanied with "affidavits, complaint, and warrant," &c. The court referred to the decision in *People v. Brady*, and said that, notwithstanding the criticisms made thereon in Leary's case, an opposite conclusion, which would make the determination of the executive final, even though the papers, if produced, clearly showed that the essential preliminaries of the law were unfulfilled, did not commend itself to its judgment.

§ 638. **Distinction in decided cases between Indictment and Affidavit.** — In *People v. Brady* the court drew a distinction between the examination of an indictment and of an affidavit to ascertain whether a crime was charged in the demanding State, and expressed the view that the former paper must be regarded as possessing higher validity as evidence of such a charge. This distinction was referred to by the court of

<sup>1</sup> 10 Ben. 197 ; 6 Abb. N. C. 44.

<sup>3</sup> *People v. Pinkerton*, 77 N. Y. 245.

<sup>2</sup> 17 Hun, 199.

<sup>4</sup> 84 N. Y. 438.

appeals again in the case of *People v. Pinkerton*, where the warrant recited that the charge was made by indictment. It is believed that there is no case in which a court has on *habeas corpus* discharged a fugitive from custody on a rendition warrant on the ground that an indictment accompanying the requisition did not constitute or contain a sufficient charge of crime.<sup>1</sup>

§ 639. **New York Decisions followed in Texas and Minnesota.**—The view that the rendition warrant need not set out in full or be accompanied with the indictment or affidavit accompanying the requisition, has been maintained by the court of appeals of Texas, in *Ex parte Stanley*;<sup>2</sup> and the court quoted from *People v. Donohue*,<sup>3</sup> the syllabus, as containing the true rule, as follows: "Where the papers upon which a warrant of extradition is issued are withheld by the executive, the warrant itself can only be looked to for the evidence that the essential conditions of its issuance have been com-

<sup>1</sup> The substantial part of the rendition warrant in *People v. Donohue* was as follows:—

"Whereas, it has been represented to me by the governor of the State of Connecticut that John Jourdan stands charged with the crime of theft, committed in the county of Middlesex, in said State, and that he has fled from the justice of that State, and has taken refuge in the State of New York; and the said governor of Connecticut having, in pursuance of the Constitution and laws of the United States, demanded of me that I shall cause the said John Jourdan to be arrested and delivered to Walter P. Chamberlin and Lyman Smith, who are duly authorized to receive him into their custody and convey him back to the said State of Connecticut.

"And whereas, the said representation and demand is accompanied by affidavits, complaint and warrant, whereby the said John Jourdan is charged with the said crime, and with having fled from the said State, and taken refuge in the State of New York, which are certified by the said governor of Connecticut to be duly authenticated.

"You are, therefore, required to arrest and secure the said John Jourdan wherever he may be found within the State, and to deliver him into the custody of the said Walter P. Chamberlin and Lyman Smith, to be taken back to the said State from which he fled, pursuant to the said requisition, &c."

The warrant in *People v. Pinkerton*, 77 N. Y. 245, was *mutatis mutandis* the same, except that it recited that a copy of the indictment accompanied the requisition, charging the crime of breaking and entering the Northampton National Bank in Massachusetts, and stealing the moneys thereof.

<sup>2</sup> 25 Tex. App. 372; 1888.

<sup>3</sup> *Supra*, § 637.

plied with, and it is sufficient if it recites what the law requires." In *State v. O'Connor*,<sup>1</sup> in 1888, before the supreme court of Minnesota, return was made of a rendition warrant issued by the governor of that State, together with all the papers on which he acted. The court, citing the New York cases, held that the papers being before it it was called on to pass upon their sufficiency. But the requisition was accompanied with an indictment, charging larceny under the laws of the State of New York, and the court, refusing to consider the sufficiency of the indictment in point of pleading, remanded the prisoner into custody.

§ 640. **How far the Court may look into Question of Flight.** — In *Ex parte Smith*,<sup>2</sup> in 1842, the court discharged the prisoner on *habeas corpus* because the affidavit accompanying the requisition on which the rendition warrant was issued did not allege or show that the relator was in the demanding State at the time of the commission of the crime. By the statute of Iowa the requisition is required to be accompanied with "sworn evidence that the party charged is a fugitive from justice." The supreme court of that State in *Jones v. Leonard*,<sup>3</sup> in 1878, the affidavit accompanying the requisition being before it, and merely stating a legal conclusion, held that the action of the executive in issuing his rendition warrant was not conclusive nor justified. The same doctrine was laid down by the supreme court of Alabama in *In re Mohr*,<sup>4</sup> in 1883. In *Ex parte Reggel*,<sup>5</sup> the Supreme Court of the United States held that a fugitive was entitled under the act of Congress "to insist upon proof that he was within the demanding State at the time he is alleged to have committed the crime charged, and subsequently withdrew from her jurisdiction, so that he could not be reached by her criminal process." Whether, it was said, the decision of the governor on this question was subject to review on *habeas corpus* or not, the prisoner should not be discharged merely because, in the judgment of the court, the evidence as to his being a

<sup>1</sup> 88 Minn. 243.

<sup>2</sup> 50 Iowa, 106.

<sup>3</sup> 114 U. S. 642.

<sup>4</sup> 8 McLean, 121.

<sup>5</sup> 73 Ala. 503.

fugitive from justice was not as full as might properly have been required, or because it was so meagre as, perhaps, to admit of a conclusion different from that reached by the governor. In *Roberts v. Reilly*,<sup>1</sup> the same court said that the question whether a person is a fugitive from justice "is one of fact, which the governor of the State upon whom the demand is made must decide, upon such evidence as he may deem satisfactory. How far his decision may be reviewed judicially in proceedings in *habeas corpus*, or whether it is not conclusive, are questions not settled by harmonious judicial decisions, nor by any authoritative judgment of this court. It is conceded that the determination of the fact by the executive of the State in issuing his warrant of arrest, upon a demand made on that ground, whether the writ contains a recital of an express finding to that effect or not, must be regarded as sufficient to justify the removal until the presumption in its favor is overthrown by contrary proof. *Ex parte Reggel*, 114 U. S. 642. Further than that it is not necessary to go in the present case." This overrules the decision of the court in *In re Jackson*,<sup>2</sup> that a warrant of rendition was invalid because it recited that the person charged had been "represented" to be a fugitive from justice, instead of stating an express conclusion on the point. Whether a person may be discharged on *habeas corpus* after his rendition and return to the demanding State, on the ground that he was not a fugitive from justice, has not been determined. It is a general principle that irregularities in rendition cannot be set up, after the fugitive has been brought back, as an answer to the charge. But in *State of Tennessee v. Jackson*,<sup>3</sup> Judge Key, of the United States district court, Eastern District of Tennessee, discharged a person who, though brought back to that State, was only a fugitive by construction, on the ground that the governors concerned were imposed upon, and that the whole

<sup>1</sup> 116 U. S. 80. It was held in *Ex parte Sheldon*, 34 Ohio St. 319, that the court would not discharge a prisoner on the ground that he was not a fugitive from justice where there was evidence to that effect before the governor.

<sup>2</sup> 2 Flippin, 183. *Supra*, § 623.

<sup>3</sup> 36 Fed. Rep. 258. See *Matter of Adams*, 7 L. Rep. 386. Also 18 Am. L. Rev. 136, 690.

transaction was a fraud. In this relation it may be noticed that good faith is always presumed in the case of public officers discharging their duty; and the good faith of rendition proceedings is not affected by the knowledge or expectation of reward of the sheriff who holds the prisoner in custody, the State being represented by the prosecuting attorney.<sup>1</sup>

§ 641. *Rules of Practice.* — The writ of *habeas corpus* must be heard on the facts shown in the return to have existed at the time of the service of the writ, and a new warrant filed after that time cannot be considered.<sup>2</sup> But it was held that where the State was improperly permitted to read an affidavit which was not a part of the respondent's return, its admission in evidence was error, but not such error as would operate to discharge the relator.<sup>3</sup> Counsel was refused permission to read in evidence as an affidavit of the prisoner the latter's petition for the writ of *habeas corpus*, the affiant being present and able to testify in person.<sup>4</sup> In *Ex parte Smith*,<sup>5</sup> the court declined to decide whether the relator could produce affidavits to show that he was not a fugitive from justice,

<sup>1</sup> *Hackney v. Welsh*, 107 Ind. 253. In the case of *Ker v. Illinois*, 119 U. S. 436, it was objected that the proceedings between the authorities of the State of Illinois and those of the State of California were not in accordance with the act of Congress, and especially that, at the time the papers and warrants were issued from the governors of California and Illinois, the defendant was not within the State of California, and was not there a fugitive from justice. On this point Mr. Justice Miller said: "It is sufficient to say, in regard to that part of this case, that when the governor of one State voluntarily surrenders a fugitive from the justice of another State to answer for his alleged offences, it is hardly a proper subject of inquiry on the trial of the case to examine into the details of the proceedings by which the demand was made by the one State and the manner in which it was responded to by the other. The case does not stand, when the party is in court and required to plead to an indictment, as it would have stood upon a writ of *habeas corpus* in California, or in any States through which he was carried in the progress of his extradition, to test the authority by which he was held; and we can see in the mere fact that the papers under which he was taken into custody in California were prepared and ready for him on his arrival from Peru, no sufficient reason for an abatement of the indictment against him in Cook County, or why he should be discharged from custody without trial." (p. 441.) To the same effect is *In re Noyes*, 17 Alb. L. J. 407; U. S. Dis. Court, N. J., *Nixon, J.*

<sup>2</sup> *In re Farez*, 7 Blatchf. 48; *In re Doo Woon*, 18 Fed. Rep. 898; *Knowlton's case*, 5 Crim. L. Mag. 250.

<sup>3</sup> *Ex parte Stanley*, 25 Tex. App. 372.

<sup>4</sup> *Leary's Case*, 10 Ben. 197.

<sup>5</sup> 3 McLean, 121.

but discharged him on the ground that the affidavit accompanying the requisition on which the rendition warrant was issued did not show him to be such. Where it was held on *habeas corpus* that the fugitive was entitled to be discharged on the ground of the insufficiency of the warrant of rendition on which he was in custody, the court denied a motion to detain him for a reasonable time until a new warrant could be obtained.<sup>1</sup> Where a fugitive, after obtaining a writ of *habeas corpus*, declined to prosecute it, and was remanded into custody, it was held that the judgment of the court remanding him into custody was in contemplation of law a judgment upon the hearing of his application, and that he was not entitled to a new writ on a petition in which he did not allege after-discovered evidence.<sup>2</sup> But the discharge of a prisoner on *habeas corpus* does not preclude the executive from issuing a new warrant of rendition for the same offence;<sup>3</sup> and where the new warrant was issued on the old requisition, which had been held by the court to be defective, a second writ of *habeas corpus* was refused on the ground that the record before the court did not show the first cause of arrest.<sup>4</sup> It was held by the supreme court of Ohio that there was no authority for taking a bill of exceptions, setting out all the testimony in a proceeding before a judge, under the act of March 23, 1875,<sup>5</sup> entitled "An Act to regulate the practice of the delivery of fugitives from justice, when demanded by another State or Territory." Also, that an order made by such a judge was not reviewable on error.<sup>6</sup>

<sup>1</sup> *Ex parte Thornton*, 9 Tex. 635.

<sup>2</sup> *Kurtz v. State*, 22 Fla. 36.

<sup>3</sup> 72 Ohio L. 79.

<sup>4</sup> *Sheldon v. McKnight*, 34 Ohio St. 316.

<sup>5</sup> *Hibler v. State*, 43 Tex. 197.

<sup>6</sup> *Ex parte Powell*, 20 Fla. 806.

## CHAPTER VIII.

## SITUATION AFTER SURRENDER.

1. *Trial for other than Rendition Offence.*

§ 642. **Opinions adverse to Such Trial.** — The question whether a person delivered up under the constitutional provision can be tried for an offence other than that for which he was surrendered, until he has had an opportunity to return to the surrendering State, has been much discussed, and has several times been decided by the courts. As against the right of trial, it is usual to cite from Binn's Justice a case therein referred to as Daniel's case, in which Judge Parsons, of the court of quarter sessions of Philadelphia, in April, 1848, is reported to have held that a fugitive could not be tried for an offence other than that on which his rendition was obtained, without an opportunity to return to the State from which he was recovered.<sup>1</sup> Another case cited as being to the same effect is the Matter of Cannon,<sup>2</sup> before the supreme court of Michigan, in January, 1882. The facts in this case are that Cannon was delivered up from Kansas on a charge of seduction. He was subsequently arrested in Michigan, while on bail on the seduction charge, in a bastardy suit growing out of the same transaction as that involved in the charge of seduction, which was afterwards discontinued. The court (through Campbell, J.) said that bastardy proceedings, though of a mixed character, involved no indictable offence on which a conviction could be had, and that they were "not criminal proceedings in the proper sense of the term." The court further said: —

"It is not pretended that any demand of extradition could be made on such a charge. Our own decisions have settled the char-

<sup>1</sup> Binn's Jus., 9 ed., 495. *Infra*, § 648.

<sup>2</sup> 47 Mich. 481.



acter of such proceedings as not criminal. . . . Can a person who has been demanded for prosecution as a criminal, and who could not have been demanded on any other ground, be arrested after arriving here, on a different complaint, and have his original accusation dropped by the same prosecuting authority? If the requisition had been made for an expressly fraudulent purpose, and with no expectation of prosecution for the crime which was its pretext, we do not think any department of the government could sanction such a use without the plainest perversion of justice. No ingenious reasoning could remove from such a transaction the disgrace which no decent Commonwealth could afford to incur. It does not seem very clear to us that it would be much less fraudulent in law or wrong in fact to take advantage of such an extradition for a similar purpose, when it is discovered that it never ought to have been demanded, and was obtained on insufficient grounds."

Up to this point the reasoning of the court rests on clear grounds,—that is to say, the prevention of the fraudulent or perverted use of rendition proceedings for the accomplishment, indirectly, of a purpose for which they could not have been used directly, namely, to hold the defendant in a civil action. The court, however, went on to argue the general question whether a person surrendered on a criminal charge could immediately be tried or held on another, and declared that on this subject there was no difference between international and interstate "extradition." "The disregard," said the court, "of domestic duties and of foreign duties should not be considered as different in quality, and where both depend on law it is impossible to find good reason for holding either class of obligations as undeserving of obedience." This reasoning is unquestionably sound so far as it emphasizes the duty of the courts to enforce the law, but it does not tend to prove that in interstate cases there is any law that forbids the trial of a fugitive for an offence other than that for which he was surrendered. There is another *dictum*, that of Daniels, J., in Lagrave's case,<sup>1</sup> which was also a civil action, to the same effect as the general observations of the court in the Matter of Cannon.

<sup>1</sup> 14 Abb. Pr. (N. S.) 343.

Similar views, however, have actually been applied by the supreme court of Kansas in a criminal case, that of *State v. Hall*,<sup>1</sup> in 1888. Hall was brought from California to Kansas on a charge of forgery, for which he was indicted in the latter State, and a copy of the indictment accompanied the requisition, in compliance with which he was delivered up. This indictment contained one count, charging forgery. After his return another indictment was found containing two counts, the first of which charged the forgery for which he was surrendered, and the other the uttering of the forged document. A *nolle prosequi* was entered as to the first indictment, and he was arrested on the second. Hall filed a motion to quash the second indictment, and the court sustained the motion as to the second count. Hall was then tried and acquitted on the first count, and the ruling of the court as to the second count was heard by the supreme court on a question reserved. The supreme court affirmed the judgment, holding that under the constitutional provision the prisoner was entitled to be tried only for the offence for which he was surrendered, and if acquitted, or after serving sentence if convicted, was also entitled to have a reasonable opportunity to return to the place from which he was delivered up before being prosecuted for another offence.<sup>2</sup>

<sup>1</sup> 40 Kans. 338.

<sup>2</sup> In support of this decision the court cited Judge Cooley, *Spear on the Law of Extradition* (who cites Judge Cooley, the case from Binn's Justice, numerous civil suits and several international cases), and the international cases. In 3 *Crim. L. Mag.* 234, the question is discussed and the cases cited, but no conclusion is reached.

John D. Lindsay, Esq., assistant district attorney, New York City, writes me as follows : —

“In the case of William E. Howard, one of the ‘Electric Sugar’ swindlers, recovered from Michigan on three indictments for grand larceny in the first degree, one of which charged the larceny of a sum of money from Lawson N. Fuller on a specific date, after the defendants were brought into the jurisdiction of the court, a new indictment was procured for this offence, containing three counts instead of one, the first count being identical with the original indictment, and the second and third varying the allegation of ownership and of the person to whom the pretences were made, the second count alleging it was the ‘Electric Sugar Refining Company,’ and the third two of the officers by whom the money obtained was held in trust. On being arraigned to plead to the new indictment,

§ 643. *Decisions in favor of Such Trial.* — On the other hand, there have been four cases in which it has distinctly been held that a person rendered up from one State to another is not protected from prosecution for offences other than that for which he was surrendered. In *In re Noyes*,<sup>1</sup> before Judge Nixon, in the United States district court for the District of New Jersey, in 1878, the petitioner was brought into New Jersey from the District of Columbia on a charge of perjury. Subsequently, and without having been set at liberty on that charge, he was indicted and held for conspiracy. Judge Nixon refused to discharge him on *habeas corpus*. He said that questions were discussed in argument before him which might properly arise between independent governments as to the construction of extradition treaties, but which were not involved in the case before the court.

In the same year the question decided in *Noyes*' case was also decided by the court of appeals of Texas, in *Ham v. The State*.<sup>2</sup> The appellant was indicted in Tavis county, Texas, for forgery of a land title. He filed a special plea to the effect that he was not a citizen of Texas but of Missouri, from which State he was brought by virtue of a rendition warrant granted by the governor upon the requisition of the governor of Texas, based upon an indictment found in Limestone county for a different offence. The indictment in the case before the court was found subsequently to his rendition, and charged an offence committed prior thereto, namely, in 1876. A demurrer to the plea was sustained, and the prisoner convicted and sentenced. A writ of error was taken. Wright, J., delivering the opinion of the court, said that

Howard, by his attorney (Wm. F. Howe), introduced a 'special plea,' objecting to being tried on the indictment, on the ground that different offences were charged in the second and third counts from that for which he was extradited. Subsequently, the district attorney moved to strike the plea from the files of the court, and after argument this was done, the court (Recorder Smyth) holding that the question could not be raised by plea."

Howard was tried, convicted, and sentenced to nine years' imprisonment in the State Prison.

<sup>1</sup> 17 Alb. L. J. 407.

<sup>2</sup> 4 Tex. App. 645. Criticised by Dr. Spear, 31 Alb. L. J. 166. See *Supra*, § 642, n.

under the provision of the Constitution of the United States respecting the delivery up of fugitives from justice and the laws regulating it, a citizen of another State surrendered to Texas might be there tried for another offence than that for which he was recovered. The doctrine of international extradition in that regard, whether based on comity or on treaty stipulations, had no application to extradition between the different States of the American Union under their common Constitution, whose obligations were founded upon mutual trust and confidence, and guarded by the provision that each State should guarantee to the citizens of the other States all the privileges and immunities which she conceded to her own. The court also referred to the absoluteness of the duty to surrender under the Constitution, extending to all cases. It should be observed that in this case the appellant, when he committed the offence for which he was indicted in Tavis county, was in Missouri.<sup>1</sup> This was one of the matters specially pleaded.

In 1884 the question of the right to try for another offence was decided by the supreme court of Wisconsin in *State v. Stewart*.<sup>2</sup> The defendant was recovered from Indiana on a charge of embezzlement, on which he was tried and acquitted. Before he could leave the court-room he was arrested on a charge of obtaining money by false pretences. On an application for discharge on a writ of *habeas corpus*, it was held that under the constitutional provision the prisoner could be held and tried for an offence other than that for which his surrender was obtained, and that he could not set up a violation of duty on the part of the trial State towards the State of Indiana.

Cassoday, J., who delivered the opinion of the court, said that the distinction between international and interstate "extradition" was very marked. There was no provision in the Constitution, or in the act of Congress passed to execute it, that provided for any delay in arresting a prisoner after acquittal, or after conviction and serving of sentence, for

<sup>1</sup> See Report on Extraterritorial Crime, by the author of the present work, p. 25.

<sup>2</sup> 60 Wis. 587; 19 N. W. Rep. 429; 30 Alb. L. J. 216. Article in approval, 19 Cent. L. J. 22.

another offence than that for which he was extradited. The constitutional provision was intended to make each State to a certain extent an agency in the administration of the laws of every other State. The State of Indiana was not complaining. It was the prisoner; and that, too, under an agreement or compact between the States, not made to secure his escape from punishment, but to insure his trial. Nor did the record disclose any executive pledge or guarantee. The court referred to Cannon's case,<sup>1</sup> and said it was evidently decided on its special circumstances.

Since the case of *The State v. Stewart*, it has been decided by the supreme court of Washington Territory, in *Harland v. Territory of Washington*,<sup>2</sup> that the courts will not discharge a prisoner delivered up by one State to another, except upon the ground of fraud or imposition; and that to obtain the surrender of a person on one charge and then try him on another does not in itself come within the exception, and is no ground for discharge.<sup>3</sup>

§ 644. **Reasons against Limitation as to Trial.** — From what has been stated it is apparent that the decided preponderance of authority is to the effect that in interstate rendition the fugitive is not privileged from trial for an offence other than that for which his surrender was demanded. This preponderance of authority seems to be sustained by the reason

<sup>1</sup> *Supra*, § 642.

<sup>2</sup> 3 Struve, 131.

<sup>3</sup> In *Waterman v. The State*, 116 Ind. 51, October 10, 1888, the appellant was delivered up by the governor of Michigan on a demand of the governor of Indiana, accompanied with an affidavit charging him with the embezzlement of money of Bruce & Ball. When, subsequently to his return, he was indicted, the indictment contained two counts, one of which was for embezzling money of Bruce & Ball, while the other was for embezzling property of the same persons. Afterwards, the count charging embezzlement of money was quashed, and the defendant was convicted on the count charging embezzlement of property. The supreme court of Indiana, on appeal, said that the indictment charged the same thing as the affidavit, except that the subject of embezzlement was charged in one count as property, while it was laid in the other count as money. "This," said the court, "was simply charging the same offence in different ways, in order to meet the evidence as it might appear at the trial. There was no error." The syllabus of the case is: "Where an accused is returned to this State upon a requisition to answer a charge of embezzling money, he may be tried upon an indictment charging embezzlement of property."

of the matter. The exemption of fugitives in international cases, where the treaty contains no specific limitation as to trial, has been argued on two grounds: (1) That of good faith; (2) that of law. As long, however, as the subject was debated on the former ground, the courts refused to concede the fugitive immunity, for the two-fold reason: (1) That a prisoner in custody on a criminal charge is not permitted to set up in opposition to his prosecution the means by which he was brought within the jurisdiction; and (2) that, there being no agreement on the subject, it was not a breach of faith to try a man for a criminal act, although it might not be that for which he was given up. That a criminal cannot set up as a bar to his prosecution the manner in which he was brought within the jurisdiction of the court, is settled by an overwhelming weight of authority. As was said by Chief Justice Gibson in *Dows' case*,<sup>1</sup> the fugitive does not bear in his person the sovereignty of the country from which he may have been taken. That state, if he has been wrongfully withdrawn from its jurisdiction, may espouse his cause, if it see fit. But the fugitive cannot be heard to assert its offended dignity, where the nation itself refuses to speak. This principle has been fully recognized by the Supreme court of the United States in the case of *Ker*, who was kidnapped from Peru, and who, the government of that country not intervening, was not permitted to set up the manner of his capture.<sup>2</sup> This decision was rendered immediately after that in the case of *Rauscher*,<sup>3</sup> in which it was held that a person surrendered by the British government on a charge of murdering a seaman on an American merchant vessel on the high seas, could not immediately be tried on a charge of cruel and unusual punishment of the seaman, though it was based upon the same facts as the extradition charge of murder. The treaty contained no express limitation as to trial. But the court held that the agreement to surrender criminals for trial for certain enumerated offences was equivalent to the exclusion of the right to try for other offences, or for any

<sup>1</sup> 18 Pa. St. 37.

<sup>2</sup> *Ker v. Illinois*, 119 U. S. 436.

<sup>3</sup> *United States v. Rauscher*, 119 U. S. 407.

offence other than that for which the fugitive was surrendered; and that the treaty being under the Constitution of the United States the law of the land, it was the duty of the judicial tribunals to give it effect. It was not because the court conceived it to be intrinsically an immoral thing to try the fugitive for an offence other than that for which he was delivered up, that it was held that he could not be so tried; for, after having obtained the surrender of a fugitive in the regular and legal way, the authorities, apprehensive lest the extradition charge might not be sustained on the trial, might, there being no agreement to the contrary, with the utmost good faith and in response to the most urgent demands of justice, seek to convict the prisoner on another charge. It was because the treaty, the law of the land, was held to forbid such trial, that the court refused to permit it. But, it may be asked, why was it that the court decided that the treaty inhibited the trial, if it did not expressly forbid it? To answer this question is to explain the fundamental difference between Extradition and Interstate Rendition. The decision rested upon the following grounds: The court held that in strict law every independent nation has the right to afford asylum to fugitive offenders and to refuse to deliver them up. This right it must be supposed to maintain except in so far as it sees fit to forego it. This it may do either in the exercise of comity, or by placing itself under the obligation of a treaty. But, in which ever way it may be secured, the particular concession is not held to have the effect of a general abandonment of the right. Hence, if a nation agrees by treaty to extradite fugitives for certain offences, it abridges its asylum only in respect to those offences; and if, under its obligation to surrender, it delivers a fugitive up, it deprives him of asylum only as to the offence for which it is shown that his extradition is due, and surrenders him to be tried for that offence and for no other. As to other offences, he is to be considered as being still within the state from which he was taken, and as being entitled to an opportunity to return to that state before being tried for any such offence. There is also yet another reason



for this rule. Whatever views may be entertained as to the right to try for another than the extradition offence, where the treaty is silent on the subject, it is universally admitted that no nation is bound to deliver up fugitives where their offences, by whatever name they may be called, are shown to be political; and it would be an infracation of international law to obtain the surrender of a fugitive for a common crime and then try him for a political offence. The opportunity which the absence of any restriction even as to common crimes would afford for political prosecutions, has been a persuasive argument in leading the courts to find in the treaties which contain no express limitation on the subject, an implied inhibition of trial for any other than the extradition offence.

Let us now apply these tests to the rendition of fugitive criminals as between the States and Territories of the Union. In the case of *Mahon v. Justice*,<sup>1</sup> in which a fugitive from the justice of Kentucky was kidnapped in West Virginia and brought back to the former State, where he was arrested and held for trial on a criminal charge, it was contended that under the Constitution and laws of the United States he had a right of asylum in the State to which he fled, which could be enforced in the courts of the United States, unless he was removed in accordance with the proceedings authorized by law. "But the plain answer to this contention is," said the Supreme Court of the United States, "that the laws of the United States do not recognize any such right of asylum as is here claimed, on the part of a fugitive from justice in any State to which he has fled; nor have they, as already stated, made any provision for the return of parties who, by violence and without lawful authority, have been abducted from a State." Such was the decision of the court, although the governor of West Virginia had demanded the restoration of the prisoner to the jurisdiction of that State.<sup>2</sup>

<sup>1</sup> 127 U. S. 700.

<sup>2</sup> Justices Bradley and Harlan dissented from the decision of the court, on the ground that the fugitive was brought into Kentucky in violation of the method prescribed by the Constitution and laws of the United States. But this was not an assertion of a right of asylum.

The Constitution and laws of the United States do not recognize, but on the contrary exclude, any right of asylum as between the States and Territories of the Union. As has been seen, the obligation to surrender is absolute and extends to all offences made penal by the laws of the demanding State or Territory.<sup>1</sup> Where a demand is preferred in accordance with law, the executive upon whom the requisition is made possesses no discretion. He cannot exact conditions. His duty is immediate and imperative. It was the obvious intention of the framers of the Constitution that State boundaries should not obstruct the administration of justice, and that each State should enjoy the same certainty in the prosecution of those who fled from its justice as in the enforcement of its laws against offenders who remained within its jurisdiction. While, therefore, in prescribing the method of recovery, the existence of separate jurisdictions and distinct governmental organizations was recognized, it was ordained that the fugitive should be given up on being merely charged with crime, and not upon such proof of his criminality as has always been required by the government of the United States in international cases. Nor has the argument as to trial for political offences any place in the consideration of interstate rendition. For the Constitution expressly requires that the fugitive shall be given up when charged with treason. By the fourth section of the fourth article of the Constitution, the United States is bound to guarantee to every State in the Union a republican form of government. The clause requiring the rendition of fugitives charged with treason is also designed to secure that object. The result of the various constitutional provisions above noticed is that there is no right of asylum as between the States of the Union and no refuge for political offenders. Where then are we to find any ground for the implication that a fugitive

<sup>1</sup> The "Interstate Extradition Conference" held in New York City in August, 1887, refused to recommend the adoption by Congress of a law to forbid demands or surrender for petty offences, on the ground that such an enactment would be in conflict with the provisions of the Constitution, which required rendition for all offences without regard to their gravity.

whose rendition was demanded on one charge cannot be tried on another?

In opposition to this it may be said that by discarding the limitation as to trial, we permit a person to be prosecuted for an offence in respect to which he did not flee from justice, and for which therefore his rendition could not have been required. This is true, and it actually occurred in *Ham v. The State*;<sup>1</sup> but it does not answer the argument against the existence of the limitation. That which, in general phrase, is commonly called the right of asylum, should more accurately be described as the right to grant asylum. It does not mean that it is the right of the individual to object to being delivered up, but that the nation in whose jurisdiction he is found may decline to surrender him. This is what is meant by the right of asylum. It is the right of the nation, not of the individual; and if the nation either does not or cannot claim it, he cannot be heard to assert it. This principle was clearly and powerfully stated by Mr. Justice Miller, delivering the opinion of the Supreme Court of the United States in *Ker v. Illinois*.<sup>2</sup>

From the right to refuse surrender flows the right to affix conditions to surrender. This being so, the surrender, whether granted in pursuance of a prior conventional engagement or on grounds of comity in the particular case, is regarded in the light of a national concession, for the sole purpose specified in the proceedings. When, therefore, the offender is delivered up for a definite purpose, it is implied that he was delivered up for that purpose and for no other. Such was the ground taken by the Supreme Court in *United States v. Rauscher*,<sup>3</sup> decided on the same day as the case of *Ker v. Illinois*. It is true that in the case of *Rauscher* the prisoner was permitted to plead his exemption; but this was upon the ground that the treaty, under which the exemption was claimed, was under the Constitution of the United States the law of the land, and as such conferred upon the prisoner a right which the courts were bound to take cogni-

<sup>1</sup> *Supra*, § 643.

<sup>2</sup> 119 U. S. 436.

<sup>3</sup> 119 U. S. 406. *Supra*, § 165.

zance of and enforce. But, if there is no right to grant asylum, and the duty to comply with the demand is peremptory and unconditional, from whence is it to be legally implied that the offender was delivered up upon the condition that he should be tried only for the crime specified in the demand? It has been suggested by a writer of such eminent authority as Judge Cooley that, unless we adopt the doctrine that the fugitive cannot be tried for any offence other than that for which he was surrendered, the constitutional clause may be perverted for the purpose of bringing persons within the jurisdiction in order to serve them with civil process.<sup>1</sup> In respect, however, to this argument, may it not be said that the remedy should only be co-extensive with the evil sought to be prevented? It has been decided in numerous cases that the process of interstate rendition cannot be abused for the promotion of civil actions; and the courts in so deciding have not failed to note the distinction between civil suits and criminal prosecutions.<sup>2</sup> But, in any event, the question of fraudulent use of process, upon which the case of Cannon<sup>3</sup> turned, may for the reasons stated in that case be thought to present several considerations not applicable to the simple trial of a person for an offence other than that for which he was rendered up.

## 2. *Rendition to a third State.*

§ 645. **Case of Hope.**—A class of cases which have been held to fall within the inhibition of trial for any offence other than that for which the fugitive was delivered up, is that in which a State is asked to surrender a person who, having been brought within its jurisdiction as a fugitive from justice, has answered its demands, but has not had an opportunity to “depart in peace” thereafter. This question was decided in November, 1889, in the case of James Hope, the bank burglar, whom Governor Hill, of New York, refused to deliver up on a requisition of the governor of Dela-

<sup>1</sup> Int. Rev., vol. iii. (1876) p. 438. See also article by same writer, Princeton Rev., 1879, p. 176.

<sup>2</sup> *Infra*, § 650.

<sup>3</sup> *Supra*, § 642.

ware. Hope escaped from the latter State while serving a long sentence of imprisonment on a conviction of burglary.<sup>1</sup> He was subsequently found in California, from whence he was delivered up to New York on a charge of crime committed in that State. On that charge he was convicted and sentenced to imprisonment in the Auburn prison. When the period of his sentence was about to expire, a requisition for his rendition was made by the governor of Delaware, in order that he might be brought back to serve out the remainder of his sentence in that State. In compliance with this demand, a warrant was issued for his arrest, to be executed immediately upon his discharge from the Auburn prison. When in due time the warrant was executed, an application was made for its revocation, on the ground, among others, that he could not be delivered up to the authorities of Delaware until he had had an opportunity to return to the jurisdiction of the State of California, from which he was taken. Governor Hill very properly held that he was liable to be delivered up as a convict, notwithstanding that the nominal term of his sentence in Delaware had expired, but revoked the warrant on the ground that as the State of New York had obtained possession of him to answer a criminal charge, its jurisdiction over him was confined to trying and punishing him on that charge. The governor based his decision chiefly on the case of *Rauscher*, in which, as has been seen, it was held that a person delivered up to the United States by the government of Great Britain, to be tried for a specified offence, could not be detained or tried for another, until he had had an opportunity to return to the jurisdiction of the surrendering government. The treaty under which the extradition of the offender was obtained did not expressly inhibit his trial for another offence. But the court held that such an inhibition was to be implied; for the reason that in strict law every independent nation has the right to grant asylum to fugitives from justice, and where it agrees to forego that right it is to be understood to do so only for the purpose specified. In respect to all other matters, the

<sup>1</sup> *Case of Hope*, 7 N. Y. Crim. Rep. 406 ; 40 Alb. L. J. 441.

fugitive is regarded as being still in the enjoyment of his asylum within the jurisdiction of the surrendering government. It was upon this ground of law, and not upon any consideration of good faith except as involved in the observance of the law, that the decision of the court rested.

The decision of Governor Hill in the case of Hope was followed in May, 1890, by Judge Macomber, of the supreme court of the State of New York at Rochester, in the case of Owen Daly, who was brought on rendition process from Ohio on a charge of stealing a horse and buggy. Having been acquitted on this charge, he was immediately rearrested on a charge of stealing a watch and other valuables prior to his flight. Judge Macomber decided upon the strength of the case of Hope that he could not be held to answer for an offence other than that for which he was delivered up, and discharged him from custody.<sup>1</sup>

§ 646. **Reasons why Rendition should be granted.** — The decision in the case of Hope,<sup>2</sup> deduced from the rule enforced in *United States v. Rauscher* and other international cases,<sup>3</sup> obviously involves the application of the doctrine of asylum, which, it has been contended, is wholly foreign from the subject of interstate rendition.<sup>4</sup> Unless, when the State of New York demanded the fugitive from California, the governor of the latter State had the right to accord asylum and hence to dictate terms of surrender, upon what basis can it be argued that the rendition was a conditional concession? Not only would such an argument appear to be unsound in logic, but it has also been rejected in principle by the Supreme Court of the United States in *Mahon v. Justice*,<sup>5</sup> in which it was held that the governor of a State had no legal right to demand from the governor of another State the return of a person who had been wrongfully taken from the jurisdiction of the former by an agent of the latter. But,

<sup>1</sup> Rochester (N. Y.) Times, Oct. 1 and 2, 1889; May 8 and 9, 1890. I desire to express my thanks to Mr. George A. Benton, district attorney of Monroe County, N. Y., for information in regard to the case of Daly.

<sup>2</sup> *Supra*, § 645.

<sup>3</sup> *Supra*, §§ 159-165, 644.

<sup>4</sup> *Supra*, § 644.

<sup>5</sup> *Supra*, § 644.

considering the case solely from the point of view of the prisoner, of what right can it be said that he is deprived by his delivery up to a third State? It is not his right to have the question of his surrender determined by the governor of any particular State. That question is, under the Constitution, to be determined in any State in which he may be "found." This does not mean that, having once been found in a certain State, he is entitled thereafter to have the question of his rendition for all prior offences determined by the governor of that State, until he shall have left its jurisdiction voluntarily. Yet this is precisely what is signified by the right of return to the jurisdiction of the surrendering state, as held to exist in extradition cases; the reason being that the fugitive, when recovered, was under the protection of the surrendering nation. This principle possesses no relevancy to the States of the United States.<sup>1</sup>

<sup>1</sup> We quote from the New York Evening Post, of December 4, 1889, a discussion of the case of Hope by Richard C. McMurtrie, Esquire, of Philadelphia, as follows: "There are two very distinct things that have here been confused, or, at least, in the reasoning that reaches this conclusion, mixed up, — extradition by treaty and extradition under the Constitution. Granting they are one and the same in one aspect, — that is, that the Constitution stands for a treaty as to the States, — there is this clear distinction: In the case of the States, all criminals must be surrendered. The law of the State surrendering or its notion as to what is criminal is quite immaterial. The offence for which the man must be surrendered may be the most praiseworthy of acts by the law of the surrendering State. The demanding State may at any time at its mere pleasure make any act it pleases criminal, and it is as much within the duty to surrender as if the charge had been reckoned the most heinous when the duty was agreed to be accepted. The state that surrenders by treaty, on the other hand, reserves the right to decide whether the case and the person are within its construction of the treaty. It defines *a priori* what crimes are to warrant the demand. The State under the Constitution has reserved no right or power in the matter. By implication there is reserved the right to determine the identity of the accused, but the constable who has the warrant has this power. There is also room for dispute as to what is meant by 'charged with felony, &c.,' and what evidence is demandable of the truth of that allegation. So with the constable. But here the right to refuse delivery ends.

"It is not a treaty or contract, it is the law, that binds the State, or rather the governor, for the State exercises no function of a State in the matter. It is the duty of the governor imposed by law; he has no choice or discretion in the matter (24 Howard, 109). The principle that led Governor Hill to his conclusion was that the State which had surrendered a citizen on the demand of a foreign power had the right to dictate the effect and consequences of the surrender. But



§ 647. **Case of Sennott.**—The question of surrender to a third State was before the courts in Illinois in 1879, in the case of the People, *ex rel.* Suydam, *v.* Sennott.<sup>1</sup> The decision in *United States v. Rauscher* had not then been pronounced, but the grounds upon which Sennott's case was determined were quite independent of what might be held to be the law in a case arising under an international convention. The facts in the case of Sennott are that, having committed a crime in Pennsylvania, he went first to West Virginia, where he remained a while, and then to Chicago, in the State of Illinois, where he resided for about two years. He then left Chicago and went to New York, from which State he was brought back to Illinois on a charge of crime there committed. After his return he was discharged on *habeas corpus*; but he was immediately rearrested on a warrant issued upon a requisition of the governor of Pennsylvania demanding his rendition for the crime committed in that State. An application was at once made to Judge McAllister, of the circuit court of Cook county, Illinois, for the discharge of the prisoner on *habeas corpus*. The ground chiefly relied upon was that he had not fled to Illinois, but was brought there against his will. It was contended that under the act of 1793 he must have fled to Illinois. The court said that the Constitution of the United States provided for the surrender of persons "who shall flee from justice and be found in another State." The act of Congress says: "Whenever the executive authority of any State or Territory demands any person as a fugitive from justice of the executive authority of any State or Territory to which such person has fled."

in the present case the demand was made under a claim that California could not resist nor dictate terms. Nor did Governor Hill require Hope to return to California and take his chance there; he treated him as a witness or suitor, and the criminal process as a civil writ, as to which there is the privilege of *eundo, morando et redeundo*, forgetting that the man had no rights of that kind, for it is not the right of the criminal, but of the State which surrenders, to consider these things.

"We work out the right of the surrendering foreign state through the medium of the criminal, it being assumed that the surrender was conditional; the real object of the principle being political liberty, and the preservation of the right of asylum."

<sup>1</sup> 11 Chicago Leg. News, 404; 20 Alb. L. J. 230.

The court said a point was made of the difference in language, but if the Constitution and the act differed the former must prevail.

“ It seems to me,” said Judge McAllister, “ to be a fair interpretation of the constitutional provisions, that the other requisites being supplied, it is only necessary, to justify the arrest under the executive warrant, that the person should be a fugitive from the justice of the demanding State, and be found in the State where the warrant issued. I, therefore, do not concur in the position that the relator cannot be amenable to such warrant, unless he had fled to this State, and remained here as such fugitive at the time of his arrest. Having committed the crime in Pennsylvania, and then departed the State, he is to be regarded as a ‘ fugitive from justice,’ so long as he keeps out of the State, and subject to the extradition laws, unless that State has lost its right to demand him by her own laches. The executive warrant in these cases is a criminal process, and when he was discharged from imprisonment under the proceedings by which he was brought here, by what rule of law, if he was here as a fugitive from justice, he could be exempt from such process, I confess myself unable to understand. The governor was under no duty to return him to New York, or guarantee a safe return. He might be privileged from arrest on civil process by a well-settled rule of law, but not from a criminal one. No such privilege is known to the law. The only requisites of a case, under the Constitution and laws, are: 1. The person demanded must be charged in some State with treason, felony, or other crime. 2. He must be a fugitive from justice, because he is expressly described as one who shall flee from justice, and who is to be delivered upon demand of the executive authority of the State from which he fled. 3. He must be found in another State than the one in which the crime is charged to have been committed.”

The court accordingly dismissed the writ, and remanded the prisoner into custody. He then obtained another writ of *habeas corpus* from Judge Drummond, of the United States circuit court for the Northern District of Illinois. Judge Drummond took the same view of the matter as Judge McAllister, and Sennott was taken back to Pennsylvania.<sup>1</sup>

<sup>1</sup> 12 Chicago Leg. News, 115.

§ 648. **Decision in Indiana.** — The same question was considered by the supreme court of Indiana in 1886, in the following case:<sup>1</sup> A person committed a crime in Michigan and fled to Indiana, where he was arrested and held in custody from December 12, 1884, till September 12, 1885, on an indictment for a crime committed in the latter State. On December 29, 1884, the governor of Indiana, upon the requisition of the governor of Michigan, issued a warrant for the prisoner's arrest and rendition. This warrant was not then executed owing to the fugitive's being held for trial in Indiana for a crime there committed. On September 12, 1885, he escaped from jail and fled to Ohio, from which State he was brought back to Indiana by regular rendition proceedings. He was then held in custody until April, 1886, when a *nolle prosequi* was entered. He was then arrested on the warrant of rendition, and claimed that, having been brought into Indiana from Ohio by "extradition" proceedings, he could not be delivered up to the State of Michigan without an opportunity to return to Ohio. The court held otherwise. In so doing it laid much stress on the fact that the fugitive originally came voluntarily into Indiana, and should not by reason of his flight from the State be placed in a better position than if he had not fled. This, the court said, distinguished it from most of the other cases. The force of this reasoning may be doubted. If it be held that a fugitive cannot be permitted to derive any advantage from his flight, the rule that he cannot be tried for an offence other than that for which he was surrendered must be rejected. This rule applies only to offences committed previously to extradition, and, practically, previously to flight. It is not doubted that a fugitive may be tried for an offence committed subsequently to his extradition. The fact that he is within the jurisdiction as an extradited person does not exempt him from obedience to the laws. But the distinction noted by the court may be thought to be open to another objection. It assumes that in order to be a fugitive from justice, the criminal must have come voluntarily into the State from which his surrender is

<sup>1</sup> *Hackney v. Walsh*, 107 Ind. 253.

demanded, or have sought asylum there. For, it is to be remembered that when he was brought into Indiana on rendition process it was from Ohio, and he could not therefore allege on that ground that he did not flee from Michigan. As a rule, proof of seeking asylum is not necessary under treaties; and it certainly is not so in rendition under the Constitution, which only requires that he shall be "found." He may be inveigled or deceived into coming into the jurisdiction, or may be there as the result of casualty. It has been held that even the employment of legal processes or of illegal violence invests him with no personal privilege which he can set up as against the demands of justice, unless, where legal processes are employed, the law confers upon him such immunity. Such immunity the court did not hold to exist in interstate rendition. On the contrary it referred with disapproval to the case cited from Binns' Justice to the effect that a person delivered up by one State to another cannot be given up to a third State without having had an opportunity to return to that which surrendered him. The court observed that that case was decided by the court of quarter sessions of Philadelphia, and was therefore of little authority, and cited against it the opinion of Chief Justice Gibson in Dows' case. The decision of the supreme court of Indiana may, therefore, be held to have involved the rejection of the theory that, where one of the United States obtains possession of a criminal by rendition proceedings, it holds him for the sole purpose of trying him on the charge upon which he was given up.

### 3. *Civil Suits.*

§ 649. **Where Rendition is not abused.** — The decision of the question whether a person brought within the jurisdiction of the State by rendition proceedings can be held to answer in a civil action has often depended upon the question whether the circumstances indicated that such proceedings were being employed for the purpose of subjecting the prisoner to civil processes. A leading case on this subject is that of Wil-

liams v. Bacon,<sup>1</sup> decided by the supreme court of New York in 1834.

The defendant was brought by rendition proceedings from Massachusetts to New York on a charge of false pretences, and, while in custody on that charge and prior to his trial, was arrested on five writs of *capias ad respondendum* in actions founded upon contract. Having been tried and acquitted, he was still held in custody on the *capiases*, when he sued out a writ of *habeas corpus* and was discharged by a commissioner. While the subject was under advisement before the commissioner, the attorney for the plaintiff in the present suit, which was one of the five, sued out another *capias*, on which the defendant was arrested, after he was set at large on the *habeas corpus*. A motion was made to set aside the *capias* last issued, and the arrest under it. Nelson, J., for the court said:—

“ It is well settled in England that a person in custody of the marshal or sheriff on a *criminal charge*, before or after conviction, is subject to a *civil action*, if leave of the court or of a judge in vacation is first granted. 1 Chitty's Crim. L. 661 ; Foster's Crim. L. 61, 62 ; Tidd's Pr. 306 ; 2 Archb. Pr. 122 ; 2 New R. 245. The defendant is not within the rule privileging *suitors* and witnesses from arrest whilst going to, attending at, or returning from court ; for if so, the rule allowing criminals in custody to be charged in civil actions in the usual way would not have been established, for the *privilege* would have been an answer to the suit. It would be unjust and unreasonable to extend this privilege to cases of this kind ; for it must continue, if it exist at all, during the whole of the criminal custody ; it might and would lead to great abuse. There is no pretence that the criminal proceeding in this case was a mere pretext to bring the defendant within the jurisdiction of the court for the purpose of proceeding against him *civiliter*. The argument of the defendant's counsel in this particular is not supported by the facts of the case. Had such fact appeared, the defendant would have been discharged. As it is, the motion is denied, with costs.”

Another leading New York case is that of Browning v. Abrams,<sup>2</sup> before the supreme court of New York, special

<sup>1</sup> 10 Wend. 636.

<sup>2</sup> 51 How. Pr. 172.

term, in April, 1876. The plaintiffs had the defendant regularly given up by California to New York on a charge of grand larceny, upon which he was convicted and sentenced in the court of general sessions in November, 1875. From this judgment the defendant appealed to the general term of the supreme court, where, in January, 1876, the conviction was reversed and a new trial ordered.<sup>1</sup> In February, 1876, the plaintiffs obtained an order for the arrest of the prisoner in a civil action. In March the defendant was retried and acquitted on the charge of larceny, but immediately thereafter was arrested on the order of arrest obtained in the civil suit. The defendant moved to set aside and vacate the order, on the ground that he was arrested in the State of California on a wrongful charge of grand larceny, for the fraudulent and illegal purpose of bringing him within the jurisdiction of the court in order to serve him with civil process. This the plaintiff denied, and he moreover replied that at the time of the rendition no civil suit was contemplated, and that none was commenced until several months after defendant's return to the State, and not until after his trial, conviction, and sentence under the indictment. Barrett, J., said:—

“ I am satisfied as a matter of fact, that the plaintiffs did not cause the defendant to be brought here with a view to his arrest *civiliter*; their sole intent was criminal punishment. This being so, *Adriance v. Lagrave* (59 N. Y. R. 110) is authority for sustaining the arrest, for there it was said — following 14 Abbt. N. S. 333 (note) — that persons bringing the party within the jurisdiction in bad faith, for the purpose of a civil arrest, should not receive any advantage from their wrongful acts; but this rule does not apply to persons not concerned in the device. It may well be assumed that the court would have added, if necessary, that the rule did not apply to the persons bringing the party on, where there was neither trick nor device, nor bad faith on their part. The test is evidently the intent. Motion denied, with ten dollars costs.”

§ 650. **Where Rendition is abused.** — On the other hand the courts do not permit rendition proceedings to be used

<sup>1</sup> *Abrams v. The People*, 13 Hun, 491.

for the purpose of promoting civil actions. We have already cited the language of the supreme court of Michigan in the matter of Cannon.<sup>1</sup> In *Underwood v. Felter*,<sup>2</sup> Judge Edwards, of the supreme court of New York, refused to permit a person to maintain a civil suit who had been concerned in the rendition proceedings under such circumstances as to indicate that he had an ulterior purpose. The principle of this rule is recognized in many cases.<sup>3</sup> The cases of *Lagrange* have already been discussed.<sup>4</sup> A leading case is that of *Compton v. Wilder*,<sup>5</sup> decided by the supreme court of Ohio, in 1883. Wilder, a resident of Pennsylvania, was brought to Ohio, on rendition proceedings, on a charge of obtaining a promissory note by false pretences. Arrived in Ohio, he waived an examination by a magistrate, and entered into a recognizance to appear before the proper criminal court at a time stated. Immediately upon his release on bail, his prosecutors commenced a civil action against him, grounded upon the note involved in the criminal prosecution, and had a summons and an order of arrest issued. The supreme court affirmed the judgments of two courts below, which in succession held that the summons and order of arrest should be set aside. The court said:—

“In this case this machinery [of rendition] was set in motion by Compton, Ault & Co., by their application to the governor of Ohio. Good faith upon the part of these applicants and good faith upon the part of Ohio to the surrendering State demanded that Wilder, having been by force brought into Ohio, for a specific purpose, should not be deprived of any rights, except such as he had forfeited by the commission of the alleged crime. He cannot be held to have forfeited any before conviction. It is claimed that he was indebted to Compton, Ault & Co. If he was, it was his right to be sued in the jurisdiction in which he was domiciled unless he voluntarily came into the jurisdiction of Ohio. It was bad faith in Compton, Ault & Co. to commence a civil action and attempt to serve a summons and an order of arrest therein upon Wilder before

<sup>1</sup> *Supra*, § 648.

<sup>2</sup> 6 N. Y. Leg. Qbs. 66.

<sup>3</sup> *Wanzer v. Bright*, 52 Ill. 35; *Metcalf v. Clarke*, 41 Barb. 45.

<sup>4</sup> *Supra*, §§ 157, 180.

<sup>5</sup> 40 Ohio St. 130.



conviction and before he had an opportunity to return to his home. It would become bad faith in this State, if her courts should make such service effective. It was a duty made incumbent upon the governor of Pennsylvania by the Constitution of the United States, to surrender Wilder, upon proper application from the governor of Ohio. . . . By the action of the executive and legislative branches of her government, Ohio has indicated to the other States her purpose to confine the use of the power to extradite persons charged with crime, to its sole and proper object.<sup>1</sup> To secure a service of summons, in a civil action like the one we are considering, is not one of the objects intended to be accomplished by this grant of power. In a country like ours this power is useful and indispensable. It was intended however to subserve great public interests. When otherwise used it becomes an evil."

<sup>1</sup> The court referred to the resolutions of the legislature of Ohio of March 25, 1870 (*supra*, § 614), and the act of January 1, 1880, R. S. § 95, as showing the policy of Ohio.



# APPENDIX I.

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## TREATIES AND STATUTES.

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### PART I.

#### EXTRADITION TREATIES.

##### 1. *Introduction.*

THE history of extradition in the United States under treaties properly begins with the conclusion of the treaty with Great Britain of August 9, 1842, commonly called the Webster-Ashburton Treaty. The only formal convention prior in date is found in the 27th article of the treaty with the same country of 1794, generally known as the Jay Treaty. But that article expired by limitation in 1807 and was not renewed; and as the only well-known case that occurred under it, that of Jonathan Robbins, involved questions of great moment and was the subject of controversies on which political parties divided, it served to retard rather than to promote the progress of extradition. When the treaty of 1842 was concluded, the case of Robbins furnished a ready text for its opponents, who ominously foreboded that the new arrangement would be perverted for the recovery of political offenders and for other illicit purposes. This distrustful feeling was not confined to those engaged in political life. It was shared as well by the courts, and found practical and inconvenient expression in the obstructive and technical jealousy with which they frequently treated the cases that came before them. Especially was this so with some of the State courts, which assumed to intervene by *habeas corpus* and discharge delinquents on narrow grounds after they had duly been committed for surrender by the Federal tribunals. In this posture of affairs, the government of the United States, desiring to render the procedure more certain and to facilitate the execution of the treaties,

adopted the act of 1848. Without entering more fully into the history of the subject, which is fully developed in the preceding pages, it is sufficient here to say that the beneficial results which were realized from the operation of the treaties, without the occurrence of any of the abuses that were predicted, gradually dissipated opposition to the system and produced a general sentiment in favor of its perpetuation and extension. The spread of this sentiment was aided not a little by the growth of commerce and the rapid development and facilitation of communication.

## 2. *Returns of Cases.*

The writer may be permitted to refer to a publication of the Department of State<sup>1</sup> for returns of all cases of extradition in which the United States was concerned, from August 9, 1842, to January 1, 1890. This publication also contains a statement of the results of all applications made from 1873 to 1890, for the extradition from foreign countries of offenders against the laws of the State of New York, including all that took place after their return. We give below a summary of the requisitions by and upon the United States from August 9, 1842, to January 1, 1890, and, so far as obtainable, the determination reached in each case upon the question of extradition. The number of surrenders granted by the United States is shown in the list of warrants of surrender. The number of surrenders by Great Britain is also quite completely disclosed, at least down to 1876. The returns for other countries are necessarily imperfect, and especially is this so with regard to Canada, and to the operation of the border-States clause in the treaty with Mexico.

## SUMMARY.

### I. *Number of Persons whose Extradition was sought by the United States.*

BELGIUM — 2 : Forgery, 1 ; murder, 1.

BRAZIL — 1 : Forgery, 1.

CHILE — 2 : Embezzlement, 1 ; larceny, 1.

COLOMBIA — 1 : Forgery, 1.

DENMARK — 1 : Forgery, 1.

FRANCE — 13 : Attempt to commit murder, 2 ; burglary, 4 ; em-

<sup>1</sup> Report on Extradition, with Returns of all cases from August 9, 1842, to January 1, 1890. By John Bassett Moore, Third Assistant Secretary of State.

bezzlement, 3 (of whom two were also sought for forgery); forgery, 6.

GERMAN STATES — 11: Forgery, 6; forged paper, utterance of, 1 (also sought for forgery); murder, 4; robbery, 1.

GREAT BRITAIN — 458: Arson, 16 (1 of whom was also sought for forgery); assault with intent to commit murder, 71 (of whom 11 were also sought for robbery, 12 for murder and robbery, and 1 for piracy and robbery); burglary, 5 (of whom 1 was sought also for larceny, 1 for robbery, and 2 for larceny and robbery); counterfeiting, 2; counterfeit money, utterance of, 4; embezzlement, 2; forgery, 152 (of whom 11 were sought also for utterance of forged paper, 1 for murder, and 1 for robbery); forged papers, utterance of, 21; larceny, 3; murder, 147 (of whom 3 were sought also for mutiny, 5 for piracy, and 15 for robbery); mutiny, 3; piracy, 21; robbery, 91.

GUATEMALA — 1: Robbery, 1.

HAWAII — 5: Embezzlement, 2; "felonies," 1; forgery, 2; forged paper, utterance of, 1 (also sought for forgery).

ITALY — 4: Counterfeiting, 1; murder, 3.

JAPAN — 2: Forgery, 1; murder, 1.

MEXICO — 29: Assault with intent to commit murder, 2 (of whom 1 was also sought for murder); embezzlement of public moneys, 8 (of whom 1 was also sought for forgery and 2 for larceny); forgery, 10 (of whom 1 was also sought for robbery); kidnapping, 1; larceny, 3; murder, 7; robbery, 3.

PERU — 6: Embezzlement, 1; forgery, 4; forged papers, utterance of, 1 (also sought for forgery); larceny, 1.

PORTUGAL — 1: Embezzlement, 1,

SPAIN — 7: Embezzlement, 2; forgery, 3; larceny, 1; murder, 1.

SWEDEN AND NORWAY — 5: Attempt to commit murder, 1 (also sought for forgery); embezzlement of public moneys, 1; forgery, 1; piracy, 3.

TOTAL — 549: Arson, 16; assault with intent to commit murder, 73; attempt to commit murder, 3; burglary, 9; counterfeiting, 3; counterfeit money, utterance of, 4; embezzlement, 12; embezzlement of public money, 9; "felonies," 1; forgery, 189; forged paper, utterance of, 24; kidnapping, 1; larceny, 9; murder, 164; mutiny, 3; piracy, 24; robbery, 96. Sixty-one persons were sought for two offences and 15 for three offences.

## II. *Number of Persons surrendered to the United States.*<sup>1</sup>

BELGIUM — 2: Forgery, 1; murder, 1.

BRAZIL — 1: Forgery, 1.

CHILI — 1: Larceny, 1.

DENMARK — 1: Forgery, 1.

FRANCE — 4: Burglary, 1; embezzlement, 1 (surrendered also for forgery); forgery, 3. One also returned voluntarily.

GERMAN STATES — 2: Forgery, 2.

GREAT BRITAIN — 168: Arson, 4; assault with intent to commit murder, 27 (of whom 6 were also surrendered for robbery and one for piracy and robbery); burglary, 2 (of whom 1 was also surrendered for larceny and 1 for robbery); forgery, 53 (of whom 5 were also surrendered for utterance of forged papers); forged papers, utterance of, 13; larceny, 1; murder, 58 (of whom 3 were also surrendered for mutiny and 4 for robbery); mutiny, 3; piracy, 1; robbery, 28. Three also returned voluntarily.

HAWAII — 3: Embezzlement, 2; forgery, 1.

JAPAN — 1: Forgery, 1.

MEXICO — 17: Embezzlement of public moneys, 4 (of whom 1 was also surrendered for forgery); forgery, 7 (of whom 1 was also surrendered for robbery); kidnapping, 1; larceny, 1; murder, 5; robbery, 1. One also returned voluntarily.

PERU — 2: Embezzlement, 1; forgery, 1.

PORTUGAL — 1: Embezzlement, 1.

SPAIN — 3: Embezzlement, 1; forgery, 2.

TOTAL — 206: Arson, 4; assault with intent to commit murder, 27; burglary, 3; embezzlement, 6; embezzlement of public moneys, 4; forgery, 73; forged papers, utterance of, 13; kidnapping, 1; larceny, 3; murder, 64; mutiny, 3; piracy, 1; robbery, 29. Twenty-three persons were surrendered for two offences, and 1 for three offences.

## III. *Number of Persons whose Extradition was sought from the United States.*

AUSTRIA — 7: Embezzlement of public moneys, 3; forgery, 4.

BELGIUM — 26: Arson 1 (sought also for murder); assault with intent to commit murder, 1; counterfeiting, 1; embezzlement, 10 (of whom 2 were also sought for forgery); forgery, 10; forged

<sup>1</sup> The cases under Brazil, Chili, Denmark, and Japan, were surrenders on the ground of comity, without formal requisition.

paper, utterance of, 2 (sought also for forgery); murder, 6 (of whom 1 was also sought for robbery); robbery, 1.

COREA — 1: Offence not stated.

FRANCE — 28: Abuse of confidence, 1 (sought also for fraudulent bankruptcy and forgery); burglary, 1; desertion, 2; embezzlement, 12 (of whom 7 were sought also for forgery); forgery, 14; fraudulent bankruptcy, 1; murder, 2 (of whom 1 was sought also for robbery); rape, 1; robbery, 1; *vol qualifié crime*, 3.

GERMAN STATES — 102: Arson, 2 (of whom 1 was also sought for murder and robbery); counterfeiting, 5 (of whom 1 was also sought for forgery); embezzlement of public money, 33 (of whom 8 were also sought for forgery); forgery, 61 (of whom 1 was also sought for murder); forged paper, utterance of, 15 (sought also for forgery); murder, 9; robbery, 2; stealing, 1; offence not stated, 1.

GREAT BRITAIN — 267: Arson, 10; assault with intent to commit murder, 51 (of whom 11 were also sought for piracy and 1 for robbery); embezzlement, 1 (sought also for forgery); forgery, 100 (of whom 18 were sought also for utterance of forged paper); forged paper, utterance of, 26; murder, 79 (of whom 1 was also sought for piracy and 4 for robbery); piracy, 19; robbery, 17.

ITALY — 20: Assault with intent to commit murder, 1 (sought also for murder and robbery); attempt to commit murder, 1; burglary, 2 (1 of whom was also sought for murder); embezzlement, 5; forgery, 1 (sought also for embezzlement); murder, 12 (of whom 1 was also sought for robbery and 1 for rape and robbery); rape, 1; robbery, 4.

MEXICO — 91: Assault with intent to commit murder, 47 (of whom 6 were also sought for murder and 41 for murder and robbery); burglary, 2 (sought also for robbery); embezzlement, 4; forgery, 4 (of whom 2 were also sought for theft); larceny of cattle, 1 (sought also for robbery); murder, 67 (of whom 1 was sought also for robbery); obtaining money under false pretences, 1; rape, 1; robbery, 56; theft, 2.

NETHERLANDS — 14: Arson, 1; embezzlement 9 (of whom 2 were also sought for forgery); forgery, 5; forged paper, utterance of, 1.

PORTUGAL — 1: Murder, 1.

RUSSIA — 2: Embezzlement, 1; robbery, 1.

SPAIN — 18: Burglary, 2 (sought also for kidnapping); embezzlement, 4; embezzlement of public moneys, 1; forgery, 1; kid-



napping, 3; murder, 5; obtaining money under false pretences, 1; rape, 1; robbery, 1; swindling, 1.

SWEDEN AND NORWAY—17: Burglary, 1; embezzlement of public moneys, 1; forgery, 10; forged papers, utterance of, 1 (sought also for forgery); murder, 3; robbery, 2.

SWITZERLAND — 10: Embezzlement, 7 (of whom 3 were sought also for forgery); embezzlement of public moneys, 1; forgery, 4; murder, 1.

TOTAL — 604: Abuse of confidence, 1; arson, 14; assault with intent to commit murder, 100; attempt to commit murder, 1; burglary, 8; counterfeiting, 6; desertion, 2; embezzlement, 55; embezzlement of public moneys, 39; forgery, 214; forged paper, utterance of, 45; fraudulent bankruptcy, 1; kidnapping, 3; larceny of cattle, 1; murder, 185; obtaining money by false pretences, 2; piracy, 19; rape, 4; robbery, 85; stealing, 1; swindling, 1; theft, 2; vol qualifié crime, 3; offence not stated, 2. Ninety-eight were sought for two offences and 45 for three offences.

#### IV. *Number of Persons surrendered by the United States.*

AUSTRIA — 6: Embezzlement of public money, 3; forgery, 3.

BELGIUM — 6: Arson 1 (surrendered also for murder); attempt to commit murder, 1; counterfeit money, fabrication and circulation of, 1; forgery, 2; murder, 2.

FRANCE — 15: Burglary, 1; embezzlement, 4; forgery, 6; rape, 1; vol qualifié crime, 3.

GERMAN STATES — 62: Arson, 1; counterfeiting, 2; embezzlement of public moneys, 10 (of whom 2 were surrendered also for forgery); forgery, 45; forged paper, utterance of, 26 (of whom 24 were surrendered also for forgery); murder, 3; robbery, 1.

GREAT BRITAIN — 122: Arson, 7; assault with intent to commit murder, 31 (of whom 7 were surrendered also for piracy and 1 for robbery); forgery, 43; forged papers, utterance of, 22 (of whom 16 were surrendered also for forgery); murder, 20; piracy, 16; robbery, 7.

ITALY — 7: Attempt to commit murder, 3 (of whom 1 was also surrendered for murder and 1 for murder and robbery); burglary, 1 (also surrendered for murder); murder, 6 (1 of whom was also surrendered for robbery and rape); rape, 1; robbery, 2.

MEXICO — 5: Burglary, 1; forgery, 3; larceny of cattle, 1.

NETHERLANDS — 4: Arson, 1; embezzlement, 1 (surrendered also for forgery); forgery, 2; forged paper, utterance of, 1.

SPAIN — 1: Forgery, 1.

SWEDEN AND NORWAY — 6: Embezzlement of public moneys, 1; forgery, 5.

SWITZERLAND — 3: Embezzlement of public moneys, 1; forgery, 1; murder, 1.

TOTAL — 237: Arson, 10; assault with intent to commit murder, 31; attempt to commit murder, 4; burglary, 3; counterfeiting, 3; embezzlement, 5; embezzlement of public moneys, 15; forgery, 111; forged papers, utterance of, 49; larceny of cattle, 1; murder, 32; piracy, 16; rape, 2; robbery, 10; vol qualifié crime, 3. Fifty-four persons were surrendered for two offences, and 2 for three offences. Of the 54, 1 was surrendered for murder and arson; 1 for attempt to commit murder and murder; 7 for assault with intent to commit murder, and piracy; 1 for assault with intent to commit murder, and robbery; 1 for murder and burglary; 1 for embezzlement and forgery; 2 for embezzlement of public moneys and forgery; 40 for forgery and utterance of forged paper. Of the 2 surrendered for three offences, one was surrendered for assault with intent to commit murder, murder, and robbery; the other, for murder, robbery, and rape.

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## PART II.

### EXTRADITION TREATIES.

#### 1. *Analysis of Offences.*

An analysis of the offences in the treaties of extradition is not only convenient for reference, but is also valuable as showing the variations in the definition of extraditable crimes. These variations disclose much probable inadvertence and not a little inaccuracy. In the earlier period of our negotiation of extradition treaties, from 1842 to 1868, little attempt at definition is discovered, the negotiators being content with the specification of the offence by some simple term. This was the case with the treaties with all the German States and with Austria-Hungary. But as the terms em-

ployed were generally those found in the common law, they had in many instances no technical equivalents in the codes of countries whose jurisprudence was founded on the Roman law. This led to attempts to establish equivalence by definition, with the result of having, in some instances, an accurate definition of the English term, but an inexact equivalent in the foreign language; and in cases not so numerous, an inaccuracy in the definition of the English term, as well as a lack of equivalence. For example, in one or two instances we find burglary erroneously defined as merely the act of breaking or forcing an entrance into another's house with intent to commit any crime, which omits the two elements that the offence must be committed in the night-time and with an intent to perpetrate a felony. In other instances we find burglary correctly defined, but the "corresponding crime" in the foreign law confined to *thefts* committed in an inhabited house by night, by breaking in, by climbing, or forcibly. This occurs in the comparatively recent treaties with Belgium and Luxemburg. It would be superfluous to point out further illustrations of inaccuracy of definition or equivalence, which will be apparent to the critical eye. It is not intended to be implied that every definition or specification of offence in our analysis constitutes a distinct and separate crime from every other in the list. Our object is to attract attention to variations, and not to express any judgment with regard to them.

#### LIST OF CRIMES IN TREATIES NOW IN FORCE.

*Abduction.* — Great Britain.

*Abortion.* — Belgium, Luxemburg, Netherlands.

*Accessoryship.* — France, 1858.

*Altering, or uttering, or circulating altered money.* — Great Britain.

*Altering seals of state.* — Netherlands.

*Arson.* — Austria-Hungary, Baden, Bavaria, Belgium, Bremen, Dominican Republic, Ecuador, France, Great Britain, Hawaiian Islands, Hayti, Italy, Japan, Luxemburg, Mecklenburg-Schwerin, Mecklenburg-Strelitz, Mexico, Netherlands, Nicaragua, North German Confederation, Oldenburg, Orange Free State, Ottoman Porte, Prussia and other States,<sup>1</sup> Salvador, Schaumburg-Lippe,

<sup>1</sup> The other States referred to, which joined Prussia in the treaty of 1852, are as follows: Saxony, Hesse, Hesse and by Rhine, Saxe-Weimar-Eisenach, Saxe-Meiningen, Saxe-Altenburg, Saxe-Coburg-Gotha, Brunswick, Anhalt-Dessau,

Spain, Sweden and Norway, Swiss Confederation, Württemberg.

*Assassination.* — See *Murder, comprehending, etc.*

*Assault on shipboard, etc.* — Great Britain. *With intent to kill,* Japan.

*Assault with intent to commit murder.* — Austria-Hungary, Baden, Bavaria, Bremen, Great Britain, Japan, Mecklenburg-Schwerin, Mecklenburg-Strelitz, Mexico, North German Confederation, Oldenburg, Prussia and other States, Schaumburg-Lippe, Württemberg.

*Attempt to commit any of crimes enumerated in convention, when such attempt is punishable by the laws of both contracting parties.* — Belgium, Luxemburg. *When punishable with imprisonment for a year or more by the laws of both countries.* — Netherlands.

*Attempt to commit murder.* — Belgium, Dominican Republic, France, Hayti, Italy, Luxemburg, Netherlands, Orange Free State, Ottoman Porte, Salvador, Spain, Sweden and Norway, Swiss Confederation.

*Attempt to commit rape.* — Belgium, Luxemburg.

*Bigamy.* — Belgium, Luxemburg, Netherlands.

*Breaking and entering public offices, etc.* — Japan, Netherlands, Spain.

*Breaking and entering the house of another in the day or night time with intent to commit felony.* — Japan.

*Burglary.* — France, Great Britain, Italy, Japan, Nicaragua, Ottoman Porte, Salvador, Spain, Sweden and Norway.

*Burglary, defining the same to be breaking and entering into the house of another, with intent to commit felony.* — Mexico.

*Burglary, this being understood as the act of breaking or forcing an entrance into another's house with intent to commit any crime.* — Ecuador.

*Burglary, or the corresponding crime in the Netherlands law, under the description of thefts committed in an inhabited house by night, and by breaking in, by climbing, or forcibly.* — Netherlands.

*Burglary, defined to be the act of breaking and entering by night*

Anhalt-Bernburg, Nassau, Schwarzburg-Rudolstadt, Schwarzburg-Sondershausen, Waldeck, Reuss elder branch, Lippe, Reuss junior branch, Hesse-Homburg, Frankfort.

*into the house of another with the intent to commit felony, and the corresponding crime punished by the Belgian laws under the description of thefts committed in an inhabited house by night, by breaking in, by climbing or forcibly.* — Belgium, Luxemburg.

*Child-stealing.* — Great Britain.

*Complicity.* — France, 1858. *When punishable as accessoryship with imprisonment for a year or more, according to laws of both countries.* — Netherlands. *Or with imprisonment or other corporal punishment by the laws of both countries.* — Spain.

*Conspiracy, etc., on shipboard.* — Great Britain, Japan, Spain.

*Counterfeiting of money.* — Dominican Republic, Hayti.

*Counterfeit money, fabrication or circulation of.* — Austria-Hungary, Baden, Bavaria, Belgium, Bremen, Ecuador, France, Hayti, Italy, Japan, Luxemburg, Mecklenburg-Schwerin, Mecklenburg-Strelitz, Mexico, Netherlands, Nicaragua, North German Confederation, Oldenburg, Ottoman Porte, Prussia and other States, Salvador, Schaumburg-Lippe, Spain, Sweden and Norway, Württemberg; *and the introduction of or making instruments for the fabrication of,* Mexico.

*Counterfeiting or altering money; uttering or bringing into circulation counterfeit or altered money.* — Great Britain, Japan.

*Counterfeiting public, sovereign, or governmental acts.* — Belgium, Italy, Luxemburg, Nicaragua, Ottoman Porte, Salvador.

*Counterfeiting, falsifying, or altering of the seals of state.* — Netherlands.

*Counterfeit public bonds, coupons, bank notes, etc., fabrication or circulation of.* — Belgium, France, Italy, Japan, Luxemburg, Mexico, Netherlands, Nicaragua, Ottoman Porte, Salvador, Spain. *Introduction of instruments for counterfeiting, etc.* — Mexico.

*Counterfeiting seals, dies, stamps, etc., and utterance thereof.* — Belgium, Ecuador, Italy, Japan, Luxemburg, Nicaragua, Ottoman Porte, Salvador, Spain.

*Embezzlement.* — Great Britain.

*Embezzlement by public officers.* — Netherlands. *When subject to infamous punishment.* — Dominican Republic, France, Hayti, Orange Free State, Salvador, Swiss Confederation.

*Embezzlement of public moneys.* — Austria-Hungary, Baden, Bavaria, Bremen, Mecklenburg-Schwerin, Mecklenburg-Strelitz,

Mexico, North German Confederation, Oldenburg, Prussia and other countries, Schaumburg-Lippe, Württemberg.

*Embezzlement of public moneys by public officers.* — Nicaragua, Orange Free State, Ottoman Porte, Salvador, Spain.

*Embezzlement of public moneys by public officers or depositaries (or "depositors").* — Belgium, Italy, Luxemburg, Nicaragua, Ottoman Porte, Salvador, Spain.

*Embezzlement by public officers, including appropriation of public funds.* — Sweden and Norway.

*Embezzlement or criminal malversation of public funds by public officers or depositaries.* — Japan, Spain.

*Embezzlement of public property by public officers or depositaries.* — Ecuador.

*Embezzlement by persons hired or salaried, when subject to infamous punishment.*<sup>1</sup> — Dominican Republic, France, Hayti, Nicaragua, Orange Free State, Ottoman Porte, Salvador, Swiss Confederation.

*Embezzlement by persons hired or salaried, when the crime is subject to punishment by the laws of the place where it was committed.* — Belgium, Luxemburg.

*Embezzlement by persons hired or salaried, when punishable with imprisonment by laws of both countries.* — Netherlands. *With imprisonment or other corporal punishment by laws of both countries.* — Spain. *With infamous punishment in United States and criminal punishment in other country.* — Italy.

*Falsification.* — See *Forgery* or, etc.

*Forged papers, utterance of.* — Bavaria, Bremen, Ecuador, France, Great Britain, Hawaiian Islands, Hayti, Mecklenburg-Schwerin, Mecklenburg-Strelitz, North German Confederation, Oldenburg, Orange Free State, Prussia and other States, Schaumburg-Lippe, Spain, Swiss Confederation, Württemberg.

*Forged or altered, uttering what is.* — Japan.

*Forgery.* — Austria-Hungary, Baden, Bavaria, Bremen, Dominican Republic, Ecuador, France, Great Britain, Hawaiian Islands, Hayti, Japan, Mecklenburg-Schwerin, Mecklenburg-Strelitz, Mexico, North German Confederation, Oldenburg, Orange Free State, Prussia and other States, Schaumburg-Lippe, Spain, Sweden and Norway, Swiss Confederation, Württemberg.

<sup>1</sup> *Supra*, § 96.

*Forgery, by which is understood the utterance of forged papers.*

— Belgium, Italy, Luxemburg, Nicaragua, Ottoman Porte, Salvador.

*Forgery, which is understood to be the wilful use or circulation of forged papers or public documents.* — Ecuador.

*Forgery or falsification of official acts of the government or public authority or courts of justice, affecting the title or claim to money or property.* — Netherlands. *Or utterance or fraudulent use of same.* — Spain.

*Fraud by a bailee, banker, etc., made criminal by laws of both countries.* — Great Britain.

*Homicide.* — Salvador.

*House-breaking.* — Great Britain.

*Infanticide.* — See *Murder, comprehending, etc.*

*Kidnapping.* — Great Britain, Italy, Mexico, Netherlands, Spain.

The offence is variously defined in these treaties.

*Larceny.* — Great Britain, Netherlands.

*Larceny of goods and chattels of the value of \$25 or more.*—

Spain. *Of cattle or other goods or chattels, of same value, when committed in frontier State or Territory.* — Mexico.

*Manslaughter.* — Netherlands. *When voluntary,* Great Britain.

*On high seas,* Japan.

*Murder.* — Austria-Hungary, Baden, Bavaria, Bremen, Great Britain, Hawaiian Islands, Japan, Mecklenburg-Schwerin, Mecklenburg-Strelitz, North German Confederation, Oldenburg, Prussia and other states, Schaumburg-Lippe, Württemberg.

*Murder, comprehending infanticide.* — Netherlands.

*Murder, comprehending crimes designated in codes as parricide, assassination, poisoning, and infanticide.* — Belgium, Dominican Republic, Ecuador, France, Hayti, Italy, Luxemburg, Mexico, Nicaragua, Orange Free State, Ottoman Porte, Salvador, Spain, Sweden and Norway, Swiss Confederation.

*Murder, assault with intent to kill, and manslaughter on the high seas, committed on vessels of demanding country.* — Japan.

*Mutilation.* — Mexico.

*Mutiny on shipboard.* — Belgium, Ecuador, Italy, Luxemburg, Netherlands, Nicaragua, Ottoman Porte, Salvador, Spain, Sweden and Norway.

*Obtaining by false devices, etc., money, etc., and knowingly purchasing what is so obtained, when crimes are punishable with*



*imprisonment or other corporal punishment by laws of both countries.* — Netherlands, Spain.

*Parricide.* — See *Murder, comprehending, etc.*

*Participation, when punished by laws of both countries.* — Great Britain.

*Perjury, or subornation of perjury.* — Great Britain, Japan.

*Piracy.* — Austria-Hungary, Baden, Bavaria, Belgium, Bremen, Dominican Republic, Ecuador, Great Britain, Hawaiian Islands, Hayti, Italy, Luxemburg, Mecklenburg-Schwerin, Mecklenburg-Strelitz, Mexico, Nicaragua, North German Confederation, Oldenburg, Orange Free State, Ottoman Porte, Prussia and other States, Salvador, Schaumburg-Lippe, Spain, Sweden and Norway, Swiss Confederation, Württemberg.

*Piracy by law of nations.* — Great Britain, Japan, Spain.

*Poisoning.* — See *Murder, comprehending, etc.*

*Purchasing, knowingly, money, etc.* — See *Obtaining, etc.*

*Railroads, wilful and unlawful destruction or obstruction, etc., which endangers human life.* — Belgium, Luxemburg, Netherlands.

*Rape.* — Belgium, Dominican Republic, Ecuador, France, Great Britain, Hayti, Italy, Japan, Luxemburg, Mexico, Netherlands, Nicaragua, Orange Free State, Ottoman Porte, Salvador, Spain, Sweden and Norway, Swiss Confederation.

*Rebellion on shipboard, etc.* — Netherlands.

*Receiving any money, valuable security, or other property, knowing the same to have been embezzled, stolen, or fraudulently obtained.* — Great Britain. *Articles obtained by means of any crime specified in convention.* — Belgium, Luxemburg.

*Revolt on shipboard, etc.* — Great Britain.

*Robbery.* — Austria-Hungary, Baden, Bavaria, Bremen, Ecuador, France, Great Britain, Hawaiian Islands, Hayti, Italy, Japan, Mecklenburg-Schwerin, Mecklenburg-Strelitz, Mexico, Nicaragua, North German Confederation, Oldenburg, Ottoman Porte, Prussia and other States, Salvador, Schaumburg-Lippe, Spain, Sweden and Norway, Württemberg. *Or the corresponding crime punished in the Netherlands law under the description of theft committed with violence or by means of threats.* — Netherlands.

*Robbery, defined to be the act of feloniously and forcibly taking from the person of another money or goods by violence or putting him in fear, and the corresponding crime punished by*

- the Belgian laws under the description of thefts committed with violence or by means of threats.* — Belgium, Luxemburg.
- Robbery with violence, intimidation, or forcible entry of an inhabited house.* — Dominican Republic, Orange Free State, Swiss Confederation.
- Ships, offences on.* — See *Assault, etc., Conspiracy, etc., Manslaughter, etc., Murder, etc., Mutiny, etc., Rebellion, etc., Revolt, etc., Sinking, etc., Vessels, etc.*
- Shop-breaking.* — Great Britain.
- Sinking ship, etc.* — Great Britain.
- Slave trade, etc.* — Great Britain, Spain.
- Theft, resulting from breaking and entering public offices, etc.* — Netherlands.
- Uttering, etc.* — See *Altering, etc., Counterfeiting, etc., Forged paper, etc., Forgery, etc.*
- Vessels, intentional destruction or loss of.* — Netherlands, Spain.
- Vol qualifié crime, corresponding to robbery, etc.* — France.

The extinct treaty with Peru contained the following crimes which were never specified in any other convention: *Fraudulent bankruptcy, Fraudulent barratry, Highway robbery, Severe injuries intentionally caused on railroads, to telegraph lines, or to persons by means of explosion of mines or steam-boilers.*

## 2. Text of Treaties.

We give below all the treaties of extradition concluded by the United States, including those now obsolete, in order that the collection may be historically complete. The fact that a treaty has been terminated is noted in each case.

### AUSTRIA-HUNGARY.

*Concluded July 3, 1856; Ratifications exchanged at Washington, December 13, 1856; Proclaimed December 15, 1856.*

Whereas it is found expedient, for the better administration of justice and the prevention of crime within the territories and jurisdiction of the parties, respectively, that persons committing certain heinous crimes, being fugitives from justice, should, under certain circumstances, be reciprocally delivered up; and also to enumerate such crimes explicitly; and whereas the laws of Austria forbid the surrender of its own citizens to a foreign jurisdiction,

the Government of the United States, with a view of making the convention strictly reciprocal, shall be held equally free from any obligation to surrender citizens of the United States ; therefore, on the one part the United States of America, and on the other part His Majesty the Emperor of Austria, having resolved to treat on this subject, have, for that purpose, appointed their respective Plenipotentiaries, to negotiate and conclude a convention ; that is to say :

The President of the United States, William L. Marcy, Secretary of State ; and His Majesty the Emperor of Austria, John George Chevalier de Hülsemann, his said Majesty's Minister Resident near the Government of the United States ; who, after reciprocal communication of their respective powers, have agreed to and signed the following articles : —

ARTICLE I. It is agreed that the United States and Austria shall, upon mutual requisitions by them or their ministers, officers or authorities, respectively made, deliver up to justice all persons who, being charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the fabrication or circulation of counterfeit money, whether coin or paper money, or the embezzlement of public moneys, committed within the jurisdiction of either party, shall seek an asylum or shall be found within the territories of the other : *Provided*, That this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial if the crime or offence had there been committed ; and the respective judges and other magistrates of the two Governments shall have power, jurisdiction and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, that he may be brought before such judges or other magistrates, respectively, to the end that the evidence of criminality may be heard and considered ; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive. The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition and receives the fugitive. The provisions of the present convention shall not be

applied, in any manner, to the crimes enumerated in the first article committed anterior to the date thereof nor to any crime or offence of a political character.

ARTICLE II. Neither of the contracting parties shall be bound to deliver up its own citizens or subjects under the stipulations of this convention.

ARTICLE III. Whenever any person accused of any of the crimes enumerated in this convention shall have committed a new crime in the territories of the state where he has sought an asylum or shall be found, such person shall not be delivered up, under the stipulations of this convention, until he shall have been tried and shall have received the punishment due to such new crime, or shall have been acquitted thereof.

ARTICLE IV. The present convention shall continue in force until the first of January, eighteen hundred and fifty-eight; and if neither party shall have given to the other six months' previous notice of its intention then to terminate the same, it shall further remain in force until the end of twelve months after either of the high contracting parties shall have given notice to the other of such intention; each of the high contracting parties reserving to itself the right of giving such notice to the other at any time after the expiration of the said first day of January, 1858.

ARTICLE V. The present convention shall be ratified by the President, by and with the advice and consent of the Senate of the United States, and by His Majesty the Emperor of Austria, and the ratifications shall be exchanged at Washington within six months from the date hereof, or sooner if possible.

In faith whereof the respective Plenipotentiaries have signed this convention and have hereunto affixed their seals.

Done in duplicate at Washington, the third day of July, in the year of our Lord one thousand eight hundred and fifty-six, and of the Independence of the United States the eightieth.

[SEAL.]

W. L. MARCY.

[SEAL.]

HÜLSEMANN.

*The treaty of naturalization with Austria-Hungary, concluded September 20, 1870, contains the following article:—*

ARTICLE III. The convention for the mutual delivery of criminals, fugitives from justice, concluded on the 3d July, 1856, between the Government of the United States of America on the

one part, and the Austro-Hungarian Monarchy on the other part, as well as the additional convention, signed on the 8th May, 1848, to the treaty of commerce and navigation concluded between the said Governments on the 27th of August, 1839 [1829], and especially the stipulations of Article IV. of the said additional convention concerning the delivery of the deserters from the ships of war and merchant vessels, remain in force without change.

JOHN JAY.  
BEUST.

### BADEN.

*Concluded January 30, 1857 ; Ratifications exchanged at Berlin, April 21, 1857 ; Proclaimed May 19, 1857.*

Whereas it is found expedient, for the better administration of justice and the prevention of crime within the territories and jurisdiction of the parties, respectively, that persons committing certain heinous crimes, being fugitives from justice, should, under certain circumstances, be reciprocally delivered up ; and also to enumerate such crimes explicitly ; and whereas the laws and constitution of Baden do not allow its Government to surrender its own citizens to a foreign jurisdiction, the Government of the United States, with a view of making the convention strictly reciprocal, shall be held equally free from any obligation to surrender citizens of the United States ; therefore, on the one part the United States of America, and on the other part His Royal Highness the Grand Duke of Baden, having resolved to treat on this subject, have, for that purpose, appointed their respective Plenipotentiaries to negotiate and conclude a convention ; that is to say :

The President of the United States of America, Peter D. Vroom, Envoy Extraordinary and Minister Plenipotentiary of the United States at the Court of the Kingdom of Prussia ; and His Royal Highness the Grand Duke of Baden, Adolph, Baron Marschall de Bieberstein, His said Royal Highness's Envoy Extraordinary and Minister Plenipotentiary at the Court of His Majesty the King of Prussia, &c. ;

Who, after reciprocal communication of their respective powers, have agreed to and signed the following articles : —

ARTICLE I. It is agreed that the United States and Baden shall, upon mutual requisitions by them, or their ministers, officers, or

authorities, respectively made, deliver up to justice all persons who, being charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the fabrication or circulation of counterfeit money, whether coin or paper money, or the embezzlement of public moneys, committed within the jurisdiction of either party, shall seek an asylum, or shall be found within the territories of the other: *Provided*, That this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the crime or offence had there been committed; and the respective judges and other magistrates of the two Governments shall have power, jurisdiction, and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, that he may be brought before such judges or other magistrates, respectively, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive.

The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition and receives the fugitive.

Nothing in this article contained shall be construed to extend to crimes of a political character.

ARTICLE II. Neither of the contracting parties shall be bound to deliver up its own citizens or subjects under the stipulations of this convention.

ARTICLE III. Whenever any person accused of any of the crimes enumerated in this convention shall have committed a new crime in the territories of the state where he has sought an asylum or shall be found, such person shall not be delivered up under the stipulations of this convention until he shall have been tried, and shall have received the punishment due to such new crime, or shall have been acquitted thereof.

ARTICLE IV. The present convention shall continue in force until the first of January, one thousand eight hundred and sixty; and if neither party shall have given to the other six months' previous notice of its intention then to terminate the same, it shall further

remain in force until the end of twelve months after either of the high contracting parties shall have given notice to the other of such intention ; each of the high contracting parties reserving to itself the right of giving such notice to the other at any time after the expiration of the said first day of January, one thousand eight hundred and sixty.

ARTICLE V. The present convention shall be ratified by the President, by and with the advice and consent of the Senate of the United States, and by the Government of Baden ; and the ratifications shall be exchanged in Berlin within one year from the date hereof, or sooner if possible.

In faith whereof the respective Plenipotentiaries have signed this convention, and have hereunto affixed their seals.

Done in duplicate, at Berlin, the thirtieth day of January, one thousand eight hundred and fifty-seven, and the eighty-first year of the Independence of the United States.

[SEAL.]

P. D. VROOM.

[SEAL.]

ADOLPH BAR. MARSCHALL DE BIEBERSTEIN.

*In the treaty of naturalization with Baden concluded July 19, 1868, is the following article : —*

ARTICLE III. The convention for the mutual delivery of criminals, fugitives from justice, concluded between the Grand Duchy of Baden on the one part, and the United States of America on the other part, the thirtieth day of January, one thousand eight hundred and fifty-seven, remains in force without change.

GEORGE BANCROFT.

V. FREYDORF.

#### BAVARIA.

*Concluded September 12, 1853 ; Ratifications exchanged at London, November 1, 1854 ; Proclaimed November 18, 1854.*

The United States of America and His Majesty the King of Bavaria, actuated by an equal desire to further the administration of justice, and to prevent the commission of crimes in their respective countries, taking into consideration that the increased means of communication between Europe and America facilitate the escape of offenders, and that, consequently, provision ought to be made in



order that the ends of justice shall not be defeated, have determined to conclude an arrangement destined to regulate the course to be observed in all cases with reference to the extradition of such individuals as, having committed any of the offences hereafter enumerated, in one country, shall have taken refuge within the territories of the other. The constitution and laws of Bavaria, however, not allowing the Bavarian Government to surrender their own subjects for trial before a foreign court of justice, a strict reciprocity requires that the Government of the United States shall be held equally free from any obligation to surrender citizens of the United States. For which purpose the high contracting powers have appointed as their Plenipotentiaries :

The President of the United States, James Buchanan, Envoy Extraordinary and Minister Plenipotentiary of the United States at the Court of the United Kingdom of Great Britain and Ireland; His Majesty the King of Bavaria, Augustus Baron de Cetto, his said Majesty's Chamberlain, Envoy Extraordinary and Minister Plenipotentiary at the Court of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Knight Commander of the Order for Merit of the Bavarian Crown and of the Order for Merit of St. Michael, Knight Grand Cross of the Royal Grecian Order of our Saviour;

Who, after reciprocal communication of their respective full powers, found in good and due form, have agreed to the following articles : —

ARTICLE I. The Government of the United States and the Bavarian Government promise and engage, upon mutual requisitions by them or their ministers, officers or authorities, respectively made, to deliver up to justice all persons who, being charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged papers, or the fabrication or circulation of counterfeit money, whether coin or paper money, or the embezzlement of public moneys, committed within the jurisdiction of either party, shall seek an asylum, or shall be found within the territories of the other: *Provided*, That this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the crime or offence had there been committed; and the respective judges and other magistrates of the two Governments shall

have power, jurisdiction and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, that he may be brought before such judges or other magistrates respectively, to the end that the evidence of criminality may be heard and considered ; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive.

The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition and receives the fugitive.

ARTICLE II. The stipulations of this convention shall be applied to any other state of the German Confederation which may hereafter declare its accession thereto.

ARTICLE III. None of the contracting parties shall be bound to deliver up its own citizens or subjects under the stipulations of this convention.

ARTICLE IV. Whenever any person, accused of any of the crimes enumerated in this convention, shall have committed a new crime in the territories of the state where he has sought an asylum or shall be found, such person shall not be delivered up under the stipulations of this convention until he shall have been tried and shall have received the punishment due to such new crime, or shall have been acquitted thereof.

ARTICLE V. The present convention shall continue in force until the first of January, one thousand eight hundred and fifty-eight ; and if neither party shall have given to the other six months' previous notice of its intention then to terminate the same, it shall further remain in force until the end of twelve months after either of the high contracting parties shall have given notice to the other of such intention ; each of the high contracting parties reserving to itself the right of giving such notice to the other at any time after the expiration of the said first day of January, one thousand eight hundred and fifty-eight.

ARTICLE VI. The present convention shall be ratified by the President, by and with the advice and consent of the Senate of the United States, and by the Government of Bavaria, and the ratifications shall be exchanged in London within fifteen months from the date hereof, or sooner if possible.

In faith whereof the respective Plenipotentiaries have signed this convention and have hereunto affixed their seals.

Done in duplicate, in London, the twelfth day of September, one thousand eight hundred and fifty-three, and the seventy-eighth year of the Independence of the United States.

[SEAL.]

JAMES BUCHANAN.

[SEAL.]

A. de CETTO.

*In the treaty of naturalization with Bavaria, concluded May 26, 1868, is the following article:—*

ARTICLE III. The convention for the mutual delivery of criminals, fugitives from justice, in certain cases, concluded between the United States on the one part, and Bavaria on the other part, the twelfth day of September, one thousand eight hundred and fifty-three, remains in force without change.

DR. OTTO FRH. VON VÖLDERNDORFF.  
GEORGE BANCROFT.

## BELGIUM.

*Concluded March 19, 1874; Ratifications exchanged at Brussels, April 30, 1874; Proclaimed May 1, 1874.<sup>1</sup>*

The United States of America and His Majesty the King of the Belgians having judged it expedient with a view to the better administration of justice, and to the prevention of crimes within their respective territories and jurisdiction that persons convicted of, or charged with, the crimes hereinafter specified, and being fugitives from justice should, under certain circumstances, be reciprocally delivered up, have resolved to conclude a convention for that purpose, and have appointed as their Plenipotentiaries: the President of the United States of America, Hamilton Fish, Secretary of State of the United States; and His Majesty the King of the Belgians, Maurice Delfosse, His Majesty's Envoy Extraordinary and Minister Plenipotentiary in the United States, who after reciprocal communication of their full powers, found in good and due form, have agreed upon the following articles, to wit:—

ARTICLE I. The Government of the United States and the Government of Belgium mutually agree to deliver up persons, who

<sup>1</sup> See Article XL of succeeding treaty.

having been convicted of, or charged with any of the crimes specified in the following Article, committed within the jurisdiction of one of the contracting parties, shall seek an asylum, or be found within the territories of the other: Provided that this shall only be done upon such evidence of criminality as according to the laws of the place where the fugitive or person so charged shall be found, would justify his or her apprehension and commitment for trial, if the crime had been there committed.

**ARTICLE II.** Persons shall be delivered up who shall have been convicted of or be charged, according to the provisions of this Convention, with any of the following crimes: —

1. Murder, comprehending the crimes designated in the Belgian penal-code by the terms of parricide, assassination, poisoning and infanticide.

2. The attempt to commit murder.

3. The crimes of rape, arson, piracy and mutiny on board a ship, whenever the crew or part thereof, by fraud or violence against the commander, have taken possession of the vessel.

4. The crime of burglary, defined to be the act of breaking and entering by night into the house of another with the intent to commit felony; and the crime of robbery, defined to be the act of feloniously and forcibly taking from the person of another, goods or money by violence or putting him in fear, and the corresponding crimes punished by the Belgian laws under the description of thefts committed in an inhabited house by night, and by breaking in by climbing or forcibly; and thefts committed with violence or by means of threats.

5. The crime of forgery, by which is understood the utterance of forged papers, and also the counterfeiting of public, sovereign or government acts.

6. The fabrication or circulation of counterfeit money either coin or paper, or of counterfeit public bonds, bank notes, obligations or, in general, anything being a title or instrument of credit; the counterfeiting of seals, dies, stamps and marks of state and public administrations, and the utterance thereof.

7. The embezzlement of public moneys committed within the jurisdiction of either party by public officers or depositaries.

8. Embezzlement by any person or persons, hired or salaried, to the detriment of their employers when the crime is subject to punishment by the laws of the place where it was committed.

**ARTICLE III.** The provisions of this treaty shall not apply to any crime or offence of a political character nor to any crime or offence committed prior to the date of this treaty, except the crimes of murder and arson, and the person or persons delivered up for the crimes enumerated in the preceding article shall in no case be tried for any crime committed previously to that for which his or their surrender is asked.

**ARTICLE IV.** Neither of the contracting parties shall be bound to deliver up its own citizens or subjects under the stipulations of this Convention.

**ARTICLE V.** If the person whose surrender may be claimed pursuant to the stipulations of the present treaty shall have been arrested for the commission of offences in the country where he has sought an asylum, or shall have been convicted thereof, his extradition may be deferred until he shall have been acquitted, or have served the term of imprisonment to which he may have been sentenced.

**ARTICLE VI.** Requisitions for the surrender of fugitives from justice shall be made by the respective diplomatic agents of the contracting parties, or, in the event of the absence of these from the country or its seat of government, they may be made by superior consular officers.

If the person whose extradition may be asked for shall have been convicted of a crime, a copy of the sentence of the court in which he may have been convicted, authenticated under its seal, and an attestation of the official character of the judge by the proper executive authority, and of the latter by the Minister or Consul of the United States or of Belgium, respectively, shall accompany the requisition. When, however, the fugitive shall have been merely charged with crime, a duly authenticated copy of the warrant for his arrest in the country where the crime may have been committed and of the depositions upon which such warrant may have been issued, must accompany the requisition as aforesaid. The President of the United States, or the proper executive authority in Belgium, may then issue a warrant for the apprehension of the fugitive, in order that he may be brought before the proper judicial authority for examination. If it should then be decided that, according to the law and the evidence, the extradition is due pursuant to the treaty, the fugitive may be given up according to the forms prescribed in such cases.

**ARTICLE VII.** The expenses of the arrest, detention and transportation of the persons claimed shall be paid by the government in whose name the requisition has been made.

**ARTICLE VIII.** This Convention shall take effect twenty days after the day of the date of the exchange of ratifications, and shall continue in force during five years from the day of such exchange ; but if neither party shall have given to the other six months' previous notice of its intention to terminate the same, the Convention shall remain in force five years longer, and so on.

The present Convention shall be ratified, and the ratifications exchanged at Brussels so soon thereafter as possible.

In witness whereof the respective Plenipotentiaries have signed the present Convention in duplicate, and have thereunto affixed their seals.

Done at the city of Washington, the 19th day of March, Anno Domini one thousand eight hundred and seventy-four.

[SEAL.]

HAMILTON FISH.

[SEAL.]

MAURICE DELFOSSE.

*Concluded June 13, 1882 ; Ratifications exchanged at Washington, November 18, 1882 ; Proclaimed November 20, 1882.*

The United States of America and His Majesty the King of the Belgians, having judged it expedient with a view to the better administration of justice and the prevention of crime within their respective territories and jurisdictions, that persons charged with or convicted of the crimes and offences hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up, have resolved to conclude a new Convention for that purpose, and have appointed, as their Plenipotentiaries : the President of the United States, Frederick T. Frelinghuysen, Secretary of State of the United States ; and His Majesty the King of the Belgians, Mr. Théodore de Bounder de Melsbroeck, Commander of his Order of Leopold, etc., etc., his Envoy Extraordinary and Minister Plenipotentiary near the government of the United States ; who, after having communicated to each other their respective full powers found in good and due form, have agreed upon and concluded the following articles : —

**ARTICLE I.** The government of the United States and the government of Belgium, mutually agree to deliver up persons who, hav-

ing been charged, as principals or accessories, with or convicted of any of the crimes and offences specified in the following article, committed within the jurisdiction of one of the contracting parties, shall seek an asylum, or be found within the territories of the other: Provided that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his or her apprehension and commitment for trial if the crime had been there committed.

**ARTICLE II.** Persons shall be delivered up who shall have been convicted of or be charged, according to the provisions of this convention, with any of the following crimes: —

1. Murder, comprehending the crimes designated in the Belgian penal code by the terms of parricide, assassination, poisoning, and infanticide.

2. The attempt to commit murder.

3. Rape, or attempt to commit rape. Bigamy. Abortion.

4. Arson.

5. Piracy or mutiny on shipboard whenever the crew, or part thereof, shall have taken possession of the vessel by fraud or by violence against the commander.

6. The crime of burglary, defined to be the act of breaking and entering by night into the house of another with the intent to commit felony; and the crime of robbery, defined to be the act of feloniously and forcibly taking from the person of another money or goods by violence or putting him in fear; and the corresponding crimes punished by the Belgian laws under the description of thefts committed in an inhabited house by night, and by breaking in by climbing or forcibly, and thefts committed with violence or by means of threats.

7. The crime of forgery, by which is understood the utterance of forged papers, and also the counterfeiting of public, sovereign, or governmental acts.

8. The fabrication or circulation of counterfeit money, either coin or paper, or of counterfeit public bonds, coupons of the public debt, bank-notes, obligations, or in general, anything being a title or instrument of credit; the counterfeiting of seals and dies, impressions, stamps, and marks of state and public administrations, and the utterance thereof.

9. The embezzlement of public moneys committed within the jurisdiction of either party by public officers or depositaries.



10. Embezzlement by any person or persons, hired or salaried, to the detriment of their employers, when the crime is subject to punishment by the laws of the place where it was committed.

11. Wilful and unlawful destruction or obstruction of railroads which endangers human life.

12. Reception of articles obtained by means of one of the crimes or offences provided for by the present convention.

Extradition may also be granted for the attempt to commit any of the crimes above enumerated when such attempt is punishable by the laws of both contracting parties.

ARTICLE III. A person surrendered under this convention, shall not be tried or punished in the country to which his extradition has been granted, nor given up to a third power for a crime or offence, not provided for by the present convention and committed previously to his extradition, until he shall have been allowed one month to leave the country after having been discharged; and, if he shall have been tried and condemned to punishment, he shall be allowed one month after having suffered his penalty or having been pardoned.

He shall moreover not be tried or punished for any crime or offence provided for by this convention committed previous to his extradition, other than that which gave rise to the extradition, without the consent of the government which surrendered him, which may, if it think proper, require the production of one of the documents mentioned in Article VII. of this convention.

The consent of that government shall likewise be required for the extradition of the accused to a third country; nevertheless such consent shall not be necessary when the accused shall have asked of his own accord to be tried or to undergo his punishment, or when he shall not have left within the space of time above specified the territory of the country to which he has been surrendered.

ARTICLE IV. The provisions of this convention shall not be applicable to persons guilty of any political crime or offence or of one connected with such a crime or offence. A person who has been surrendered on account of one of the common crimes or offences mentioned in Article II., shall consequently in no case be prosecuted and punished in the state to which his extradition has been granted on account of a political crime or offence committed by him previously to his extradition or on account of an act connected with such a political crime or offence, unless he has been at liberty to leave the country for one month after having been tried



and, in case of condemnation, for one month after having suffered his punishment or having been pardoned.

An attempt against the life of the head of a foreign government, or against that of any member of his family when such attempt comprises the act either of murder or assassination, or of poisoning, shall not be considered a political offence or an act connected with such an offence.

ARTICLE V. Neither of the contracting parties shall be bound to deliver up its own citizens or subjects under the stipulations of this convention.

ARTICLE VI. If the person whose surrender may be claimed pursuant to the stipulations of the present treaty shall have been arrested for the commission of offences in the country where he has sought an asylum, or shall have been convicted thereof, his extradition may be deferred until he shall have been acquitted, or have served the term of imprisonment to which he may have been sentenced.

ARTICLE VII. Requisitions for the surrender of fugitives from justice shall be made by the respective diplomatic agents of the contracting parties, or, in the event of the absence of these from the country or its seat of government, they may be made by superior consular officers.

If the person whose extradition may be asked for shall have been convicted of a crime or offence, a copy of the sentence of the court in which he may have been convicted, authenticated under its seal, and attestation of the official character of the judge by the proper executive authority, and of the latter by the minister or consul of the United States or of Belgium, respectively, shall accompany the requisition. When, however, the fugitive shall have been merely charged with crime, a duly authenticated copy of the warrant for his arrest in the country where the crime may have been committed, and of the depositions upon which such warrant may have been issued, must accompany the requisition as aforesaid.

The President of the United States, or the proper executive authority in Belgium, may then issue a warrant for the apprehension of the fugitive, in order that he may be brought before the proper judicial authority for examination. If it should then be decided that, according to the law and the evidence, the extradition is due pursuant to the treaty, the fugitive may be given up according to the forms prescribed in such cases.

**ARTICLE VIII.** The expenses of the arrest, detention and transportation of the persons claimed shall be paid by the government in whose name the requisition has been made.

**ARTICLE IX.** Extradition shall not be granted, in pursuance of the provisions of this convention, if legal proceedings or the enforcement of the penalty for the act committed by the person claimed, has become barred by limitation, according to the laws of the country to which the requisition is addressed.

**ARTICLE X.** All articles found in the possession of the accused party and obtained through the commission of the act with which he is charged, or that may be used as evidence of the crime for which his extradition is demanded, shall be seized if the competent authority shall so order, and shall be surrendered with his person.

The rights of third parties to the articles so found shall nevertheless be respected.

**ARTICLE XI.** The present convention shall take effect thirty days after the exchange of ratifications.

After it shall have taken effect, the convention of March 19, 1874, shall cease to be in force and shall be superseded by the present convention which shall continue to have binding force for six months after a desire for its termination shall have been expressed in due form by one of the two governments to the other.

It shall be ratified and its ratifications shall be exchanged at Washington as soon as possible.

In witness whereof, the respective Plenipotentiaries have signed the above articles, both in the English and French languages, and they have thereunto affixed their seals.

Done in duplicate, at the city of Washington, this thirteenth day of June, 1882.

[SEAL.]

FREDK. T. FRELINGHUYSEN.

[SEAL.]

THRE. de BOUNDER de MELS BROECK.

**BREMEN.**

*Concluded September 6, 1853; Ratifications exchanged at Washington, October 14, 1853; Proclaimed October 15, 1853.*

[Translation.]

Whereas a convention for the mutual delivery of criminals fugitives from justice, in certain cases, between Prussia and other states of the Germanic Confederation, on the one part, and the

United States of North America on the other part, was concluded at Washington, on the 16th June, 1852, by the Plenipotentiaries of the contracting parties, and was subsequently duly ratified on the part of the contracting governments; and whereas, pursuant to the second article of the said convention, the United States have agreed that the stipulations of said convention shall be applied to any other State of the Germanic Confederation which might subsequently declare its accession thereto: Therefore the Senate of the free Hanseatic city of Bremen accordingly hereby declares their accession to the said convention of the 16th June, 1852, which is literally as follows:

[A copy of the convention of the 16th of June, 1852, between the United States and Prussia and other Germanic States is here inserted:]

And hereby expressly promises that all and every one of the articles and provisions contained in the said convention shall be faithfully observed and executed within the dominion of the free Hanseatic city of Bremen.

In faith whereof the President of the Senate has executed the present declaration of accession, and has caused the great seal of Bremen to be affixed to the same.

Done at Bremen the sixth day of September, eighteen hundred and fifty-three.

The President of the Senate,

[SEAL.]

SMIDT.

BREULS,

*Secretary.*

### DOMINICAN REPUBLIC.

*Concluded February 8, 1867; Ratification exchanged at Santo Domingo, October 5, 1867; Proclaimed October 24, 1867.*

ARTICLE XXVII. The United States of America and the Dominican Republic, on requisitions made in their name through the medium of their respective diplomatic and consular agents, shall deliver up to justice persons who, being charged with the crimes enumerated in the following article, committed within the jurisdiction of the requiring party, shall seek asylum, or shall be found within the territories of the other: *Provided*, That this shall be done only when the fact of the commission of the crime shall be so established as to justify their apprehension and commitment for trial, if the crime had been committed in the country where

the persons so accused shall be found ; in all of which the tribunals of said country shall proceed and decide according to their own laws.

**ARTICLE XXVIII.** Persons shall be delivered up according to the provisions of this convention, who shall be charged with any of the following crimes, to wit : Murder (including assassination, parricide, infanticide, and poisoning) ; attempt to commit murder ; rape ; forgery ; the counterfeiting of money ; arson ; robbery with violence, intimidation, or forcible entry of an inhabited house ; piracy ; embezzlement by public officers, or by persons hired or salaried, to the detriment of their employers, when these crimes are subject to infamous punishment.

**ARTICLE XXIX.** On the part of each country the surrender shall be made only by the authority of the executive thereof. The expenses of detention and delivery, effected in virtue of the preceding articles, shall be at the cost of the party making the demand.

**ARTICLE XXX.** The provisions of the foregoing articles relating to the surrender of fugitive criminals shall not apply to offences committed before the date hereof, nor to those of a political character.

### ECUADOR.

*Concluded June 28, 1872 ; Ratifications exchanged at Quito, November 12, 1873 ; Proclaimed December 24, 1873.*

The United States of America and the Republic of Ecuador having deemed it conducive to the better administration of justice and the prevention of crime within their respective territories, that all persons convicted of, or accused of the crimes enumerated below, being fugitives from justice, shall be under certain circumstances reciprocally delivered up, have resolved to conclude a treaty upon the subject ; and the President of the United States has for this purpose named Rumsey Wing, a citizen of the United States, and their Minister Resident in Ecuador, as Plenipotentiary on the part of the United States ; and the President of Ecuador has named Francisco Tavier Leon, Minister of the Interior and of Foreign Affairs, as Plenipotentiary on the part of Ecuador ; who having reciprocally communicated their full powers, and the same having been found in good and due form, have agreed upon the following articles, viz. : —

**ARTICLE I.** The Government of the United States, and the Government of Ecuador mutually agree to deliver up such persons as may be convicted of, or may be accused of the crimes set forth in the following article, committed within the jurisdiction of one of the contracting parties, and who may have sought refuge, or be found within the territory of the other: it being understood that this is only to be done when the criminality shall be proved in such manner that according to the laws of the country where the fugitive or accused may be found such persons might be lawfully arrested and tried, had the crime been committed within its jurisdiction.

**ARTICLE II.** Persons convicted of or accused of any of the following crimes shall be delivered up, in accordance with the provisions of this Treaty: —

1st. Murder, including assassination, parricide, infanticide, and poisoning.

2nd. The crime of rape, arson, piracy, and mutiny on shipboard when the crew or a part thereof, by fraud or violence against the commanding officer, have taken possession of the vessel.

3rd. The crime of burglary, this being understood as the act of breaking or forcing an entrance into another's house with intent to commit any crime, and the crime of robbery, this being defined as the act of taking from the person of another, goods or money with criminal intent, using violence or intimidation.

4th. The crime of forgery, — which is understood to be the wilful use or circulation of forged papers or public documents.

5th. The fabrication or circulation of counterfeit money, either coin or paper, of public bonds, bank bills, and securities, and in general of any kind of titles to or instruments of credit, the counterfeiting of stamps, dies, seals, and marks of the state, and of the administrative authorities, and the sale or circulation thereof.

6th. Embezzlement of public property, committed within the jurisdiction of either party by public officers or depositaries.

**ARTICLE III.** The stipulations of this treaty shall not be applicable to crimes or offences of a political character; and the person or persons delivered up charged with the crimes specified in the foregoing article shall not be prosecuted for any crime committed previously to that for which his or their extradition may be asked.

**ARTICLE IV.** If the person whose extradition may have been applied for in accordance with the stipulations of the present treaty

shall have been arrested for offences committed in the country where he has sought refuge, or if he shall have been sentenced therefor, his extradition may be deferred until his acquittal, or the expiration of the term for which he shall have been sentenced.

**ARTICLE V.** Requisitions for the extradition of fugitives from justice shall be made by the respective diplomatic agents of the contracting parties, or in case of the absence of these from the country or its capital, they may be made by superior consular officers. If the person whose extradition is asked for shall have been convicted of a crime, the requisition must be accompanied by a copy of the sentence of the court that has convicted him, authenticated under its seal, and an attestation of the official character of the judge who has signed it, made by the proper executive authority; also by an authentication of the latter by the Minister or Consul of the United States or Ecuador respectively. On the contrary, however, when the fugitive is merely charged with crime, a duly authenticated copy of the warrant for his arrest in the country where the crime has been committed, and of any evidence in writing upon which such warrant may have been issued, must accompany the aforesaid requisition. The President of the United States or the proper executive authority of Ecuador, may then order the arrest of the fugitive, in order that he may be brought before the judicial authority, which is competent to examine the question of extradition.

If, then, according to the evidence and the law, it be decided that the extradition is due in conformity with this treaty, the fugitive shall be delivered up, according to the forms prescribed in such cases.

**ARTICLE VI.** The expenses of the arrest, detention, and transportation of persons claimed, shall be paid by the Government in whose name the requisition shall have been made.

**ARTICLE VII.** This treaty shall continue in force for ten years from the day of the exchange of ratifications, but in case neither party shall have given to the other one year's previous notice of its intention to terminate the same, then this treaty shall continue in force for ten years longer, and so on.

The present treaty shall be ratified, and the ratifications exchanged in the Capital of Ecuador, within two months from the day on which the session of the coming Congress of Ecuador shall terminate, which will be in October, 1873.

In testimony whereof the respective Plenipotentiaries have signed the present treaty in duplicate, and have hereunto affixed their seals.

Done in the city of Quito, Capital of the Republic of Ecuador, this twenty-eighth day of June, one thousand eight hundred and seventy-two.

[SEAL.]

RUMSEY WING.

[SEAL.]

FRANCISCO TAVIER LEÓN.

### FRANCE.

*Concluded November 9, 1843; Ratifications exchanged at Washington, April 12, 1844; Proclaimed April 13, 1844.*

The United States of America and His Majesty the King of the French having judged it expedient, with a view to the better administration of justice, and to the prevention of crime within their respective territories and jurisdictions, that persons charged with the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up, the said United States of America and His Majesty the King of the French have named as their Plenipotentiaries to conclude a convention for this purpose;

That is to say, the President of the United States of America, Abel P. Upshur, Secretary of State of the United States, and His Majesty the King of the French, the Sieur Pageot, officer of the Royal Order of the Legion of Honor, his Minister Plenipotentiary, ad interim, in the United States of America;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following articles: —

ARTICLE I. It is agreed that the high contracting parties shall, on requisitions made in their name, through the medium of their respective diplomatic agents, deliver up to justice persons who, being accused of the crimes enumerated in the next following article, committed within the jurisdiction of the requiring party, shall seek an asylum, or shall be found within the territories of the other: *Provided*, That this shall be done only when the fact of the commission of the crime shall be so established as that the laws of the country in which the fugitive or the person so accused shall be found



would justify his or her apprehension and commitment for trial, if the crime had been there committed.

ARTICLE II. Persons shall be so delivered up who shall be charged, according to the provisions of this convention, with any of the following crimes, to wit: Murder (comprehending the crimes designated in the French penal code by the terms, assassination, parricide, infanticide, and poisoning), or with an attempt to commit murder, or with rape, or with forgery, or with arson, or with embezzlement by public officers, when the same is punishable with infamous punishment.

ARTICLE III. On the part of the French Government, the surrender shall be made only by authority of the Keeper of the Seals, Minister of Justice; and on the part of the Government of the United States, the surrender shall be made only by authority of the Executive thereof.

ARTICLE IV. The expenses of any detention and delivery effected in virtue of the preceding provisions shall be borne and defrayed by the Government in whose name the requisition shall have been made.

ARTICLE V. The provisions of the present convention shall not be applied in any manner to the crimes enumerated in the second article, committed anterior to the date thereof, nor to any crime or offence of a purely political character.

ARTICLE VI. This convention shall continue in force until it shall be abrogated by the contracting parties, or one of them; but it shall not be abrogated, except by mutual consent, unless the party desiring to abrogate it shall give six months' previous notice of his intention to do so. It shall be ratified, and the ratifications shall be exchanged within the space of six months, or earlier if possible.

In witness whereof, the respective Plenipotentiaries have signed the present convention in duplicate, and have affixed thereto the seal of their arms.

Done at Washington the ninth day of November, anno Domini one thousand eight hundred and forty-three.

[SEAL.]

[SEAL.]

A. P. UPSHUR.

A. PAGEOT.

ADDITIONAL ARTICLE TO THE TREATY OF NOVEMBER 9, 1843.

*Concluded February 24, 1845; Ratifications exchanged at Paris, June 21, 1845; Proclaimed July 24, 1845.*

The crime of robbery, defining the same to be the felonious and forcible taking from the person of another, of goods or money to any value, by violence, or putting him in fear; and the crime of burglary, defining the same to be, breaking and entering by night into a mansion-house of another, with intent to commit felony; and the corresponding crimes included under the French law in the words *vol qualifié crime*, not being embraced in the second article of the convention of extradition concluded between the United States of America and France, on the ninth of November, 1843, it is agreed by the present article, between the high contracting parties, that persons charged with those crimes shall be respectively delivered up, in conformity with the first article of the said convention; and the present article, when ratified by the parties, shall constitute a part of the said convention, and shall have the same force as if it had been originally inserted in the same.

In witness whereof, the respective Plenipotentiaries have signed the present article, in duplicate, and have affixed thereto the seal of their arms.

Done at Washington this twenty-fourth of February, 1845.

[SEAL.]

J. C. CALHOUN.

[SEAL.]

A. PAGEOT.

AN ADDITIONAL ARTICLE TO THE CONVENTIONS OF NOVEMBER 9, 1843, AND FEBRUARY 24, 1845.

*Concluded February 10, 1858; Ratifications exchanged at Washington, February 12, 1859; Proclaimed February 14, 1859.*

It is agreed between the high contracting parties that the provisions of the treaties for the mutual extradition of criminals between the United States of America and France, of November 9, 1843, and February 24, 1845, and now in force between the two Governments, shall extend not only to persons charged with the crimes therein mentioned, but also to persons charged with the following crimes, whether as principals, accessories, or accomplices, namely: Forging or knowingly passing or putting in circulation counterfeit coin or bank notes or other paper current as money,

with intent to defraud any person or persons; embezzlement by any person or persons hired or salaried to the detriment of their employers, when these crimes are subject to infamous punishment.

In witness whereof the respective Plenipotentiaries have signed the present article in triplicate, and have affixed thereto the seal of their arms.

Done at Washington the tenth of February, 1858.

[SEAL.]

LEW. CASS.

[SEAL.]

SARTIGES.

### GREAT BRITAIN.

*Concluded November 19, 1794; Ratification exchanged at London, October 28, 1795; Proclaimed February 29, 1796.*

ARTICLE XXVII. It is further agreed that His Majesty and the United States, on mutual requisitions, by them respectively, or by their respective Ministers or officers authorized to make the same, will deliver up to justice all persons who, being charged with murder or forgery, committed within the jurisdiction of either, shall seek an asylum within any of the countries of the other, provided that this shall only be done on such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the offence had there been committed. The expense of such apprehension and delivery shall be borne and defrayed by those who make the requisition and receive the fugitive.

ARTICLE XXVIII. It is agreed that the first ten articles of this treaty shall be permanent, and that the subsequent articles, except the twelfth, shall be limited in their duration to twelve years, to be computed from the day on which the ratifications of this treaty shall be exchanged.<sup>1</sup>

*Concluded August 9, 1842; Ratifications exchanged at London, October 13, 1842; Proclaimed November 10, 1842.*

ARTICLE X. It is agreed that the United States and Her Britannic Majesty shall, upon mutual requisitions by them, or their Ministers, officers, or authorities, respectively made, deliver up to justice all persons who, being charged with the crime of murder,

<sup>1</sup> The ratifications were exchanged October 28, 1795, and the 27th article expired in 1807.

or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged paper, committed within the jurisdiction of either, shall seek an asylum or shall be found within the territories of the other: Provided, that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial if the crime or offence had there been committed; and the respective judges and other magistrates of the two Governments shall have power, jurisdiction and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, that he may be brought before such judges or other magistrates, respectively, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive. The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition and receives the fugitive.

ARTICLE XI. . . . The tenth article shall continue in force until one or the other of the parties shall signify its wish to terminate it, and no longer.

EXTRADITION CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND HER BRITANNIC MAJESTY, SUPPLEMENTARY TO THE TENTH ARTICLE OF THE TREATY, CONCLUDED BETWEEN THE SAME HIGH CONTRACTING PARTIES ON THE NINTH DAY OF AUGUST, 1842.

*Concluded at Washington, July 12, 1889; ratification advised (with amendments) by the Senate, February 18, 1890; ratified by the President of the United States, February 25, 1890; ratified by Her Britannic Majesty, March 8, 1890; ratifications exchanged at London, March 11, 1890; proclaimed, March 25, 1890.*

Whereas by the Tenth Article of the Treaty concluded between the United States of America and Her Britannic Majesty on the ninth day of August, 1842, provision is made for the extradition of persons charged with certain crimes;

And Whereas it is now desired by the High Contracting Parties that the provisions of the said Article should embrace certain

crimes not therein specified, and should extend to fugitives convicted of the crimes specified in the said Article and in this Convention ;

The said High Contracting Parties have appointed as their Plenipotentiaries to conclude a Convention for this purpose, that is to say : —

The President of the United States of America, James G. Blaine, Secretary of State of the United States ;

And Her Majesty, the Queen of the United Kingdom of Great Britain and Ireland, Sir Julian Pauncefote, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Knight Commander of the Most Honorable Order of the Bath, and Envoy Extraordinary and Minister Plenipotentiary of Her Britannic Majesty to the United States ;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles : —

**ARTICLE I.** The provisions of the said Tenth Article are hereby made applicable to the following additional crimes :

1. Manslaughter, when voluntary.
2. Counterfeiting or altering money ; uttering or bringing into circulation counterfeit or altered money.
3. Embezzlement ; larceny ; receiving any money, valuable security, or other property, knowing the same to have been embezzled, stolen, or fraudulently obtained.
4. Fraud by a bailee, banker, agent, factor, trustee, or director or member or officer of any company, made criminal by the laws of both countries.
5. Perjury, or subornation of perjury.
6. Rape ; abduction ; child-stealing ; kidnapping.
7. Burglary ; house-breaking or shop-breaking.
8. Piracy by the law of nations.
9. Revolt, or conspiracy to revolt by two or more persons on board a ship on the high seas, against the authority of the master ; wrongfully sinking or destroying a vessel at sea, or attempting to do so ; assaults on board a ship on the high seas, with intent to do grievous bodily harm.
10. Crimes and offences against the laws of both countries for the suppression of slavery and slave-trading.

Extradition is also to take place for participation in any of

the crimes mentioned in this Convention or in the aforesaid Tenth Article, provided such participation be punishable by the laws of both countries.

**ARTICLE II.** A fugitive criminal shall not be surrendered, if the offence in respect of which his surrender is demanded be one of a political character, or if he proves that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character.

No person surrendered by either of the High Contracting Parties to the other shall be triable or tried, or be punished for any political crime or offence, or for any act connected therewith, committed previously to his extradition.

If any question shall arise as to whether a case comes within the provisions of this Article, the decision of the authorities of the government in whose jurisdiction the fugitive shall be at the time shall be final.

**ARTICLE III.** No person surrendered by or to either of the High Contracting Parties shall be triable or be tried for any crime or offence, committed prior to his extradition, other than the offence for which he was surrendered, until he shall have had an opportunity of returning to the country from which he was surrendered.

**ARTICLE IV.** All articles seized which were in the possession of the person to be surrendered at the time of his apprehension, whether being the proceeds of the crime or offence charged, or being material as evidence in making proof of the crime or offence, shall, so far as practicable, and if the competent authority of the state applied to for the extradition has ordered the delivery thereof, be given up when the extradition takes place. Nevertheless, the rights of third parties with regard to the articles aforesaid shall be duly respected.

**ARTICLE V.** If the individual claimed by one of the two High Contracting Parties, in pursuance of the present Convention, should also be claimed by one or several other Powers on account of crimes or offences committed within their respective jurisdictions, his extradition shall be granted to that state whose demand is first received.

The provisions of this Article, and also of Articles II. to IV., inclusive, of the present Convention, shall apply to surrender for offences specified in the aforesaid Tenth Article, as well as to surrender for offences specified in this Convention.

**ARTICLE VI.** The extradition of fugitives under the provisions of this Convention and of the said Tenth Article shall be carried out in the United States and in Her Majesty's dominions, respectively, in conformity with the laws regulating extradition for the time being in force in the surrendering state.

**ARTICLE VII.** The provisions of the said Tenth Article and of this Convention shall apply to persons convicted of the crimes therein respectively named and specified, whose sentence therefor shall not have been executed.

In case of a fugitive criminal alleged to have been convicted of the crime for which his surrender is asked, a copy of the record of the conviction and of the sentence of the court before which such conviction took place, duly authenticated, shall be produced, together with the evidence proving that the prisoner is the person to whom such sentence refers.

**ARTICLE VIII.** The present Convention shall not apply to any of the crimes herein specified which shall have been committed, or to any conviction which shall have been pronounced, prior to the date at which the Convention shall come into force.

**ARTICLE IX.** This Convention shall be ratified, and the ratifications shall be exchanged at London as soon as possible.

It shall come into force ten days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties, and shall continue in force until one or the other of the High Contracting Parties shall signify its wish to terminate it, and no longer.

In witness whereof, the undersigned have signed the same and have affixed thereto their seals.

Done in duplicate at the city of Washington, this twelfth day of July, 1889.

[SEAL.]

[SEAL.]

JAMES G. BLAINE.

JULIAN PAUNCEFOTE.

#### HANOVER.<sup>1</sup>

*Concluded January 18, 1855 ; Ratifications exchanged at London, April 17, 1855 ; Proclaimed May 5, 1855.*

The United States of America and His Majesty the King of Hanover, actuated by an equal desire to further the administration

<sup>1</sup> Terminated by absorption of Hanover by Prussia.



of justice, and to prevent the commission of crimes in their respective countries, taking into consideration that the increased means of communication between Europe and America facilitate the escape of offenders, and that consequently provision ought to be made in order that the ends of justice shall not be defeated, have determined to conclude an arrangement destined to regulate the course to be observed in all cases with reference to the extradition of such individuals as, having committed any of the offences hereafter enumerated in one country, shall have taken refuge within the territories of the other. The constitution and laws of Hanover, however, not allowing the Hanoverian Government to surrender their own subjects for trial before a foreign court of justice, a strict reciprocity requires that the Government of the United States shall be held equally free from any obligation to surrender citizens of the United States. For which purposes the high contracting Powers have appointed as their Plenipotentiaries : —

The President of the United States, James Buchanan, Envoy Extraordinary and Minister Plenipotentiary of the United States at the Court of the United Kingdom of Great Britain and Ireland; His Majesty the King of Hanover, the Count Adolphus von Kielmansegge, his Envoy Extraordinary and Minister Plenipotentiary to Her Britannic Majesty, Grand Cross of the Order of the Guelphs, &c. ;

Who, after reciprocal communication of their respective full powers, found in good and due form, have agreed to the following articles : —

ARTICLE I. The Government of the United States and the Hanoverian Government promise and engage, upon mutual requisitions by them, or their Ministers, officers, or authorities respectively made, to deliver up to justice all persons who, being charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged papers, or the fabrication or circulation of counterfeit money, whether coin or paper money, or the embezzlement of public moneys, committed within the jurisdiction of either party, shall seek an asylum, or shall be found within the territories of the other; provided that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial if the crime or offence had

there been committed; and the respective judges and other magistrates of the two governments shall have power, jurisdiction, and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, that he may be brought before such judges or other magistrates, respectively, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive.

The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition and receives the fugitive.

ARTICLE II. The stipulations of this convention shall be applied to any other State of the Germanic Confederation which may hereafter declare its accession thereto.

ARTICLE III. None of the contracting parties shall be bound to deliver up its own subjects or citizens under the stipulations of this convention.

ARTICLE IV. Whenever any person accused of any of the crimes enumerated in this convention shall have committed a new crime in the territories of the state where he has sought an asylum, or shall be found, such person shall not be delivered up, under the stipulations of this convention, until he shall have been tried and shall have received the punishment due to such new crime, or shall have been acquitted thereof.

ARTICLE V. The present convention shall continue in force until the first of January, one thousand eight hundred and fifty-eight; and if neither party shall have given to the other six months' previous notice of its intention then to terminate the same, it shall further remain in force until the end of twelve months after either of the high contracting parties shall have given notice to the other of such intention, each of the high contracting parties reserving to itself the right of giving such notice to the other at any time after the expiration of the said first day of January, one thousand eight hundred and fifty-eight.

ARTICLE VI. The present convention shall be ratified by the President, by and with the advice and consent of the Senate of the United States, and by the Government of Hanover, and the ratifications shall be exchanged in London within three months from the date hereof, or sooner if possible.

In faith whereof the respective Plenipotentiaries have signed this convention. and have hereunto affixed their seals.

Done in duplicate in London, the eighteenth day of January, one thousand eight hundred and fifty-five, and the seventy-ninth year of the independence of the United States.

[SEAL.]

JAMES BUCHANAN.

[SEAL.]

A. KIELMANSEGGE.

### HAWAIIAN ISLANDS.

*Concluded December 20, 1849; Ratifications exchanged at Honolulu, August 24, 1850; Proclaimed November 9, 1850.*

ARTICLE XIV. The contracting parties mutually agree to surrender, upon official requisition, to the authorities of each, all persons who, being charged with the crimes of murder, piracy, arson, robbery, forgery, or the utterance of forged paper, committed within the jurisdiction of either, shall be found within the territories of the other; provided that this shall only be done upon such evidence of criminality as, according to the laws of the place where the person so charged shall be found, would justify his apprehension and commitment for trial, if the crime had there been committed. And the respective judges and other magistrates of the two governments shall have authority, upon complaint made under oath, to issue a warrant for the apprehension of the person so charged, that he may be brought before such judges or other magistrates respectively, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive. The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition and receives the fugitive.

### HAYTI.

*Concluded November 3, 1864; Ratifications exchanged at Washington, May 22, 1865; Proclaimed July 6, 1865.*

ARTICLE XXXVIII. It is agreed that the high contracting parties shall, on requisitions made in their name, through the medium

of their respective diplomatic agents, deliver up to justice persons who, being charged with the crimes enumerated in the following article, committed within the jurisdiction of the requiring party, shall seek an asylum or shall be found within the territories of the other: *Provided*, That this shall be done only when the fact of the commission of the crime shall be so established as to justify their apprehension and commitment for trial, if the crime had been committed in the country where the persons so accused shall be found; in all of which the tribunals of said country shall proceed and decide according to their own laws.

ARTICLE XXXIX. Persons shall be delivered up, according to the provisions of this treaty, who shall be charged with any of the following crimes, to wit: murder (including assassination, parricide, infanticide, and poisoning), attempt to commit murder, piracy, rape, forgery, the counterfeiting of money, the utterance of forged paper, arson, robbery, and embezzlement by public officers, or by persons hired or salaried, to the detriment of their employers, when these crimes are subject to infamous punishment.

ARTICLE XL. The surrender shall be made, on the part of each country, only by the authority of the executive thereof. The expenses of the detention and delivery, effected in virtue of the preceding articles, shall be at the cost of the party making the demand.

ARTICLE XLI. The provisions of the foregoing articles relating to the extradition of fugitive criminals shall not apply to offences committed before the date hereof, nor to those of a political character. Neither of the contracting parties shall be bound to deliver up its own citizens under the provisions of this treaty.

#### ITALY.

*Concluded March 23, 1868; Ratifications exchanged at Washington, September 17, 1868; Proclaimed September 30, 1868.*

The United States of America and His Majesty the King of Italy, having judged it expedient, with a view to the better administration of justice, and to the prevention of crimes within their respective territories and jurisdiction, that persons convicted of or charged with the crimes hereinafter specified, and being fugitives from jus-

tice, should, under certain circumstances, be reciprocally delivered up, have resolved to conclude a convention for that purpose, and have appointed as their Plenipotentiaries: —

The President of the United States, William H. Seward, Secretary of State; His Majesty the King of Italy, the Commander Marcello Cerruti, Envoy Extraordinary and Minister Plenipotentiary;

Who, after reciprocal communication of their full powers, found in good and due form, have agreed upon the following articles, to wit: —

**ARTICLE I.** The Government of the United States and the Government of Italy mutually agree to deliver up persons who, having been convicted of or charged with the crimes specified in the following article, committed within the jurisdiction of one of the contracting parties, shall seek an asylum or be found within the territories of the other: Provided, that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his or her apprehension and commitment for trial, if the crime had been there committed.

**ARTICLE II.** Persons shall be delivered up who shall have been convicted of, or be charged, according to the provisions of this convention, with any of the following crimes: —

1. Murder, comprehending the crimes designated in the Italian penal code by the terms of parricide, assassination, poisoning, and infanticide.

2. The attempt to commit murder.

3. The crimes of rape, arson, piracy, and mutiny on board a ship, whenever the crew, or part thereof, by fraud or violence against the commander, have taken possession of the vessel.

4. The crime of burglary, defined to be the action of breaking and entering by night into the house of another with the intent to commit felony; and the crime of robbery, defined to be the action of feloniously and forcibly taking from the person of another goods or money, by violence or putting him in fear.

5. The crime of forgery, by which is understood the utterance of forged papers, the counterfeiting of public, sovereign, or government acts.

6. The fabrication or circulation of counterfeit money, either coin or paper, of public bonds, bank-notes, and obligations, and in

general of any title and instrument of credit whatsoever, the counterfeiting of seals, dies, stamps, and marks of state and public administrations, and the utterance thereof.

7. The embezzlement of public moneys, committed within the jurisdiction of either party, by public officers or depositors.

8. Embezzlement by any person or persons hired or salaried, to the detriment of their employers, when these crimes are subject to infamous punishment.

ARTICLE III. The provisions of this treaty shall not apply to any crime or offence of a political character, and the person or persons delivered up for the crimes enumerated in the preceding article shall in no case be tried for any ordinary crime, committed previously to that for which his or their surrender is asked.

ARTICLE IV. If the person whose surrender may be claimed, pursuant to the stipulations of the present treaty, shall have been arrested for the commission of offences in the country where he has sought an asylum, or shall have been convicted thereof, his extradition may be deferred until he shall have been acquitted, or have served the term of imprisonment to which he may have been sentenced.

ARTICLE V. Requisitions for the surrender of fugitives from justice shall be made by the respective diplomatic agents of the contracting parties, or in the event of the absence of these from the country or its seat of government, they may be made by superior consular officers. If the person whose extradition may be asked for shall have been convicted of a crime, a copy of the sentence of the court in which he may have been convicted, authenticated under its seal, and an attestation of the official character of the judge by the proper executive authority, and of the latter by the Minister or Consul of the United States or of Italy, respectively, shall accompany the requisition. When, however, the fugitive shall have been merely charged with crime, a duly authenticated copy of the warrant for his arrest in the country where the crime may have been committed, or of the depositions upon which such warrant may have been issued, must accompany the requisition as aforesaid. The President of the United States, or the proper executive authority in Italy, may then issue a warrant for the apprehension of the fugitive, in order that he may be brought before the proper judicial authority for examination. If it should then be decided that, according to law and the evidence, the extradition is due pursuant to

the treaty, the fugitive may be given up according to the forms prescribed in such cases.

ARTICLE VI. The expenses of the arrest, detention, and transportation of the persons claimed, shall be paid by the government in whose name the requisition shall have been made.

ARTICLE VII. This convention shall continue in force during five (5) years from the day of exchange of ratifications; but if neither party shall have given to the other six (6) months' previous notice of its intention to terminate the same, the convention shall remain in force five years longer, and so on.

The present convention shall be ratified, and the ratifications exchanged at Washington, within six (6) months, and sooner if possible.

In witness whereof, the respective Plenipotentiaries have signed the present convention in duplicate, and have thereunto affixed their seals.

Done at Washington the twenty-third day of March, A. D. one thousand eight hundred and sixty-eight, and of the Independence of the United States the ninety-second.

[SEAL.]

WILLIAM H. SEWARD.

[SEAL.]

M. CERRUTI.

CONVENTION FOR THE EXTRADITION OF CRIMINALS FUGITIVE FROM JUSTICE, BEING ADDITIONAL ARTICLE TO THE CONVENTION OF MARCH 28, 1868.

*Concluded January 21, 1869; Ratifications exchanged at Washington, May 7, 1869; Proclaimed May 11, 1869.*

It is agreed that the concluding paragraph of the second article of the convention aforesaid shall be so amended as to read as follows: —

8. Embezzlement by any person or persons hired or salaried, to the detriment of their employers, when these crimes are subject to infamous punishment according to the laws of the United States, and criminal punishment according to the laws of Italy.

In witness whereof, the respective Plenipotentiaries have signed the present article in duplicate, and have affixed thereto the seal of their arms.

Done at Washington the 21st day of January, 1869.

[SEAL.]

WILLIAM H. SEWARD.

[SEAL.]

M. CERRUTI.



SUPPLEMENTARY CONVENTION TO THE CONVENTION OF  
MARCH 23, 1868.

*Concluded June 11, 1884; Ratifications exchanged at Washington, April 24, 1885; Proclaimed, April 24, 1885.*

The President of the United States of America and His Majesty the King of Italy, being convinced of the necessity of adding some stipulations to the extradition Convention concluded between the United States and Italy on the 23d of March, 1868, with a view to the better administration of justice and the prevention of crime in their respective territories and jurisdictions, have resolved to conclude a supplementary Convention for this purpose, and have appointed as their Plenipotentiaries, to wit: The President of the United States, Frederick T. Frelinghuysen, Secretary of State of the United States ;

And His Majesty the King of Italy, Baron Saverio Fava, His Envoy Extraordinary and Minister Plenipotentiary at Washington ;

Who, after reciprocal communication of their full powers, which were found to be in good and due form, have agreed upon the following articles : —

ARTICLE I. The following paragraph is added to the list of crimes on account of which extradition may be granted, as provided in Article II. of the aforesaid Convention of March 23, 1868 :

9. Kidnapping of minors or adults, that is to say, the detention of one or more persons for the purpose of extorting money from them or their families, or for any other unlawful purpose.

ARTICLE II. The following clause shall be inserted after Article V. of the aforesaid Convention of March 23, 1868 : —

Any competent judicial magistrate of either of the two countries shall be authorized after the exhibition of a certificate signed by the Minister of Foreign Affairs [of Italy] or the Secretary of State [of the United States] attesting that a requisition has been made by the Government of the other country to secure the preliminary arrest of a person condemned for or charged with having therein committed a crime for which, pursuant to this Convention, extradition may be granted, and on complaint duly made under oath by a person cognizant of the fact, or by a diplomatic or consular officer of the demanding Government, being duly authorized by the latter, and attesting that the aforesaid crime was thus perpetrated, to issue a warrant for the arrest of the person thus incul-

pated, to the end that he or she may be brought before the said magistrate, so that the evidence of his or her criminality may be heard and considered; and the person thus accused and imprisoned shall from time to time be remanded to prison until a formal demand for his or her extradition shall be made and supported by evidence as above provided; if, however, the requisition, together with the documents above provided for, shall not be made, as required, by the diplomatic representative of the demanding Government, or, in his absence, by a consular officer thereof, within forty days from the date of the arrest of the accused, the prisoner shall be set at liberty.

ARTICLE III. These supplementary articles shall be considered as an integral part of the aforesaid original extradition Convention of March 23, 1868, and together with the additional article of January 21, 1869, as having the same value and force as the Convention itself, and as destined to continue and terminate in the same manner.

The present Convention shall be ratified, and the ratifications exchanged at Washington as speedily as possible, and it shall take effect immediately after the said exchange of ratifications.

In testimony whereof, the respective Plenipotentiaries have signed the present Convention in duplicate, and have thereunto affixed their seals.

Done at Washington, this eleventh day of the month of June in the year of our Lord one thousand eight hundred and eighty-four.

[SEAL.]

FREDK. T. FRELINGHUYSEN.

[SEAL.]

FAVA.

## JAPAN.

*Concluded April 29, 1886; Ratifications exchanged at Tokio, September 27, 1886; Proclaimed November 3, 1886.*

The President of the United States of America and his Majesty the Emperor of Japan having judged it expedient, with a view to the better administration of justice, and to the prevention of crime within the two countries and their jurisdictions, that persons charged with or convicted of the crimes or offences hereinafter named and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up, they have named as

their Plenipotentiaries to conclude a Treaty for this purpose, that is to say : —

The President of the United States of America, Richard B. Hubbard, their Envoy Extraordinary and Minister Plenipotentiary near His Imperial Majesty, and His Majesty the Emperor of Japan Count Inouye Kaoru, Jinsammi, His Imperial Majesty's Minister of State for Foreign Affairs, First Class of the Order of the Rising Sun, &c., who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following articles : —

ARTICLE I. The High Contracting Parties engage to deliver up to each other, under the circumstances and conditions stated in the present Treaty, all persons, who being accused or convicted of one of the crimes or offences named below in Article II., and committed within the jurisdiction of the one Party, shall be found within the jurisdiction of the other Party.

ARTICLE II. 1. Murder, and assault with intent to commit murder.

2. Counterfeiting or altering money, or uttering or bringing into circulation counterfeit or altered money ; counterfeiting certificates or coupons of public indebtedness, bank notes, or other instruments of public credit of either of the parties, and the utterance or circulation of the same.

3. Forgery or altering, and uttering what is forged or altered.

4. Embezzlement or criminal malversation of the public funds, committed within the jurisdiction of either party, by public officers or depositaries.

5. Robbery.

6. Burglary, defined to be the breaking and entering by night-time into the house of another person with the intent to commit a felony therein ; and the act of breaking and entering the house of another, whether in the day or night time, with the intent to commit a felony therein.

7. The act of entering, or of breaking and entering, the offices of the Government and public authorities, or the offices of banks, banking-houses, savings-banks, trust companies, insurance or other companies, with the intent to commit a felony therein.

8. Perjury, or the subornation of perjury.

9. Rape.

10. Arson.

11. Piracy by the law of nations.

12. Murder, assault with intent to kill, and manslaughter, committed on the high seas, on board a ship bearing the flag of the demanding country.

13. Malicious destruction of, or attempt to destroy, railways, trams, vessels, bridges, dwellings, public edifices, or other buildings, when the act endangers human life.

ARTICLE III. If the person demanded be held for trial in the country on which the demand is made, it shall be optional with the latter to grant extradition or to proceed with the trial: Provided that, unless the trial shall be for the crime for which the fugitive is claimed, the delay shall not prevent ultimate extradition.

ARTICLE IV. If it be made to appear that extradition is sought with a view to try or punish the person demanded for an offence of a political character, surrender shall not take place; nor shall any person surrendered be tried or punished for any political offence committed previously to his extradition, or for any offence other than that in respect of which the extradition is granted.

ARTICLE V. The requisition for extradition shall be made through the diplomatic agents of the contracting parties, or, in the event of the absence of these from the country or its seat of government, by superior consular officers.

If the person whose extradition is requested shall have been convicted of a crime, a copy of the sentence of the court in which he was convicted, authenticated under its seal, and an attestation of the official character of the judge by the proper executive authority, and of the latter by the Minister or Consul of the United States or of Japan, as the case may be, shall accompany the requisition. When the fugitive is merely charged with crime, a duly authenticated copy of the warrant of arrest in the country making the demand and of the depositions on which such warrant may have been issued, must accompany the requisition.

The fugitive shall be surrendered only on such evidence of criminality as according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the crime had been there committed.

ARTICLE VI. On being informed by telegraph or other written communication through the diplomatic channel, that a lawful warrant has been issued by competent authority upon probable cause for the arrest of a fugitive criminal charged with any of the crimes

enumerated in Article II. of this Treaty, and, on being assured from the same source that a request for the surrender of such criminal is about to be made in accordance with the provisions of this Treaty, each Government will endeavor to procure so far as it lawfully may the provisional arrest of such criminal, and keep him in safe custody for a reasonable time, not exceeding two months, to await the production of the documents upon which the claim for extradition is founded.

**ARTICLE VII.** Neither of the contracting parties shall be bound to deliver up its own citizens or subjects under the stipulations of this convention, but they shall have the power to deliver them up if in their discretion it be deemed proper to do so.

**ARTICLE VIII.** The expenses of the arrest, detention, examination, and transportation of the accused shall be paid by the Government which has requested the extradition.

**ARTICLE IX.** The present Treaty shall come into force sixty days after the exchange of the ratifications thereof. It may be terminated by either of them, but shall remain in force for six months after notice has been given of its termination.

The Treaty shall be ratified, and the ratifications shall be exchanged at Washington, as soon as possible.

In witness whereof the respective Plenipotentiaries have signed the present treaty in duplicate and have thereunto affixed their seals.

Done at the city of Tokio, the twenty-ninth day of April, in the eighteen hundred and eighty-sixth<sup>1</sup> year of the Christian era, corresponding to the Twenty-ninth day of the Fourth month, of the nineteenth year of Meiji.

[SEAL.]

[SEAL.]

RICHARD B. HUBBARD.

INOUE KAORU.

<sup>1</sup> In the protocol of exchange of the ratifications of this treaty, signed by the Plenipotentiaries at Tokio, September 27, 1886, it is declared that "the eighteen hundred and eighty-sixth year of the Christian era" is intended to mean the year A. D. 1886. The protocol also declares that notwithstanding the treaty provided that the exchange of the ratifications should take place at Washington, the Two High Contracting Parties, in order to save time, agreed that the exchange should take place at Tokio instead.

## LUXEMBURG.

*Concluded October 29, 1883; Ratifications exchanged at Berlin, July 14, 1884;  
Proclaimed August 12, 1884.*

The United States of America and His Majesty the King of the Netherlands, Grand Duke of Luxemburg, having judged it expedient, with a view to the better administration of justice and the prevention of crime within their respective territories and jurisdictions, that persons charged with or convicted of the crimes and offences hereinafter enumerated, and being fugitives from justice, should, under certain circumstances be reciprocally delivered up, have resolved to conclude a convention for that purpose and have appointed as their Plenipotentiaries: —

The President of the United States of America, Mr. A. A. Sargent, His Envoy Extraordinary and Minister Plenipotentiary to His Majesty the Emperor of Germany at Berlin; and His Majesty the King of the Netherlands, Grand Duke of Luxemburg, Dr. Paul Eyschen, his Director General of the Department of Justice and Chargé d'Affaires of the Grand Duchy of Luxemburg at Berlin, Chevalier of the 2d Class of the Order of the Golden Lion of the House of Nassau, Commander of the Order of the Crown of Oak and of that of the Lion of the Netherlands, &c.

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following articles: —

ARTICLE I. The Government of the United States and the Government of Luxemburg mutually agree to deliver up persons who, having been charged, as principals or accessories, with or convicted of any of the crimes and offences specified in the following article, committed within the jurisdiction of one of the contracting parties, shall seek an asylum or be found within the territories of the other. Provided that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his or her apprehension and commitment for trial if the crime had been there committed.

ARTICLE II. Persons shall be delivered up who shall have been convicted of or be charged, according to the provisions of the convention, with any of the following crimes: —

1. Murder, comprehending the crimes designated in the penal code of Luxemburg by the terms of parricide, assassination, poisoning, and infanticide.

2. The attempt to commit murder.

3. Rape, or attempt to commit rape, bigamy, abortion.

4. Arson.

5. Piracy or mutiny on shipboard whenever the crew or part thereof shall have taken possession of the vessel by fraud or violence against the commander.

6. The crime of burglary, defined to be the act of breaking and entering by night into the house of another with the intent to commit felony; and the crime of robbery, defined to be the act of feloniously and forcibly taking from the person of another money or goods by violence or putting him in fear; and the corresponding crimes punished by the laws of Luxemburg under the description of thefts committed in an inhabited house by night and by breaking in, by climbing or forcibly; and thefts committed with violence or by means of threats.

7. The crime of forgery, by which is understood the utterance of forged papers, and also the counterfeiting of public, sovereign, or governmental acts.

8. The fabrication or circulation of counterfeit money, either coin or paper, or of counterfeit public bonds, coupons of the public debt, bank-notes, obligations, or, in general, anything being a title or instrument of credit; the counterfeiting of seals and dies, impressions, stamps, and marks of state and public administrations and the utterance thereof.

9. The embezzlement of public moneys committed within the jurisdiction of either party by public officers or depositaries.

10. Embezzlement by any person or persons, hired or salaried, to the detriment of their employers, when the crime is subject to punishment by the laws of the place where it was committed.

11. Wilful and unlawful destruction or obstruction of railroads which endangers human life.

12. Reception of articles obtained by means of one of the crimes or offences provided for by the present convention.

Extradition may also be granted for the attempt to commit any of the crimes above enumerated, when such attempt is punishable by the laws of both contracting parties.

**ARTICLE III.** A person surrendered under this convention shall

not be tried or punished in the country to which his extradition has been granted, nor given up to a third power for a crime or offence not provided for by the present convention and committed previously to his extradition, until he shall have been allowed one month to leave the country after having been discharged ; and if he shall have been tried and condemned to punishment, he shall be allowed one month after having suffered his penalty or having been pardoned.

He may however be tried or punished for any crime or offence provided for by this convention committed previous to his extradition, other than that which gave rise to the extradition, and notice of the purpose to so try him, with specification of the offence charged, shall be given to the Government which surrendered him, which may, if it think proper, require the production of one of the documents mentioned in Article VII. of this convention.

The consent of that government shall be required for the extradition of the accused to a third country ; nevertheless such consent shall not be necessary when the accused shall have asked of his own accord to be tried or to undergo his punishment, or when he shall not have left within the space of time above specified the territory of the country to which he has been surrendered.

ARTICLE IV. The provisions of this convention shall not be applicable to persons guilty of any political crime or offence or of one connected with such a crime or offence. A person who has been surrendered on account of one of the common crimes or offences mentioned in Article II. shall consequently in no case be prosecuted and punished in the State to which his extradition has been granted on account of a political crime or offence committed by him previously to his extradition, or on account of an act connected with such a political crime or offence, unless he has been at liberty to leave the country for one month after having been tried, and, in case of condemnation, for one month after having suffered his punishment or having been pardoned.

An attempt against the life of the head of a foreign government or against that of any member of his family, when such attempt comprises the act either of murder or assassination or of poisoning, shall not be considered a political offence or an act connected with such an offence.

ARTICLE V. Neither of the contracting parties shall be bound to deliver up its own citizens or subjects under the stipulations of this convention.



**ARTICLE VI.** If the person whose surrender may be claimed pursuant to the stipulations of the present treaty shall have been arrested for the commission of offences in the country where he has sought an asylum, or shall have been convicted thereof, his extradition may be deferred until he shall have been acquitted, or have served the term of imprisonment to which he may have been sentenced.

**ARTICLE VII.** Requisitions of the surrender of fugitives from justice shall always be made through a diplomatic channel.

If the person whose extradition may be asked for shall have been convicted of a crime or offence, a copy of the sentence of the court in which he may have been convicted, authenticated under its seal and attestation of the official character of the judge by the proper executive authority; and of the latter by the minister or consul of the United States or by the minister or consul charged with the interests of Luxemburg, respectively, shall accompany the requisition. When, however, the fugitive shall have been merely charged with crime, a duly authenticated copy of the warrant for his arrest in the country where the crime may have been committed, and of the depositions upon which such warrant may have been issued, must accompany the requisition as aforesaid. The President of the United States or the proper authority in Luxemburg may then issue a warrant for the apprehension of the fugitive, in order that he may be brought before the proper judicial authority for examination. If it should then be decided that, according to the law and the evidence, the extradition is due pursuant to the treaty, the fugitive may be given up according to the forms prescribed in such cases.

**ARTICLE VIII.** The expenses of the arrest, detention, and transportation of the persons claimed shall be paid by the government in whose name the requisition has been made.

**ARTICLE IX.** Extradition shall not be granted in pursuance of the provisions of this convention, if legal proceedings or the enforcement of the penalty for the act committed by the person claimed, has become barred by limitation, according to the laws of the country to which the requisition is addressed.

**ARTICLE X.** All articles found in the possession of the accused party and obtained through the commission of the act with which he is charged, or that may be used as evidence of the crime for which his extradition is demanded, shall be seized if the competent authority shall so order, and shall be surrendered with his person.

not be tried or punished in the country to which his extradition has been granted, nor given up to a third power for a crime or offence not provided for by the present convention and committed previously to his extradition, until he shall have been allowed one month to leave the country after having been discharged; and if he shall have been tried and condemned to punishment, he shall be allowed one month after having suffered his penalty or having been pardoned.

He may however be tried or punished for any crime or offence provided for by this convention committed previous to his extradition, other than that which gave rise to the extradition, and notice of the purpose to so try him, with specification of the offence charged, shall be given to the Government which surrendered him, which may, if it think proper, require the production of one of the documents mentioned in Article VII. of this convention.

The consent of that government shall be required for the extradition of the accused to a third country; nevertheless such consent shall not be necessary when the accused shall have asked of his own accord to be tried or to undergo his punishment, or when he shall not have left within the space of time above specified the territory of the country to which he has been surrendered.

ARTICLE IV. The provisions of this convention shall not be applicable to persons guilty of any political crime or offence or of one connected with such a crime or offence. A person who has been surrendered on account of one of the common crimes or offences mentioned in Article II. shall consequently in no case be prosecuted and punished in the State to which his extradition has been granted on account of a political crime or offence committed by him previously to his extradition, or on account of an act connected with such a political crime or offence, unless he has been at liberty to leave the country for one month after having been tried, and, in case of condemnation, for one month after having suffered his punishment or having been pardoned.

An attempt against the life of the head of a foreign government or against that of any member of his family, when such attempt comprises the act either of murder or assassination or of poisoning, shall not be considered a political offence or an act connected with such an offence.

ARTICLE V. Neither of the contracting parties shall be bound to deliver up its own citizens or subjects under the stipulations of this convention.

**ARTICLE VI.** If the person whose surrender may be claimed pursuant to the stipulations of the present treaty shall have been arrested for the commission of offences in the country where he has sought an asylum, or shall have been convicted thereof, his extradition may be deferred until he shall have been acquitted, or have served the term of imprisonment to which he may have been sentenced.

**ARTICLE VII.** Requisitions of the surrender of fugitives from justice shall always be made through a diplomatic channel.

If the person whose extradition may be asked for shall have been convicted of a crime or offence, a copy of the sentence of the court in which he may have been convicted, authenticated under its seal and attestation of the official character of the judge by the proper executive authority; and of the latter by the minister or consul of the United States or by the minister or consul charged with the interests of Luxemburg, respectively, shall accompany the requisition. When, however, the fugitive shall have been merely charged with crime, a duly authenticated copy of the warrant for his arrest in the country where the crime may have been committed, and of the depositions upon which such warrant may have been issued, must accompany the requisition as aforesaid. The President of the United States or the proper authority in Luxemburg may then issue a warrant for the apprehension of the fugitive, in order that he may be brought before the proper judicial authority for examination. If it should then be decided that, according to the law and the evidence, the extradition is due pursuant to the treaty, the fugitive may be given up according to the forms prescribed in such cases.

**ARTICLE VIII.** The expenses of the arrest, detention, and transportation of the persons claimed shall be paid by the government in whose name the requisition has been made.

**ARTICLE IX.** Extradition shall not be granted in pursuance of the provisions of this convention, if legal proceedings or the enforcement of the penalty for the act committed by the person claimed, has become barred by limitation, according to the laws of the country to which the requisition is addressed.

**ARTICLE X.** All articles found in the possession of the accused party and obtained through the commission of the act with which he is charged, or that may be used as evidence of the crime for which his extradition is demanded, shall be seized if the competent authority shall so order, and shall be surrendered with his person.

The rights of third parties to the articles so found shall nevertheless be respected.

ARTICLE XI. The present convention shall take effect thirty days after the exchange of ratifications.

It may be terminated by either of the contracting parties, but shall remain in force for six months after notice has been given for its termination.

It shall be ratified and its ratifications shall be exchanged as soon as possible.

In witness whereof the respective plenipotentiaries have signed the above articles both in the English and French languages, and they have thereunto affixed their seals.

Done, in duplicate, at the city of Berlin, this 29th day of October, A. D. 1883.

[SEAL.]

A. A. SARGENT.

[SEAL.]

PAUL EYSCHEN.

### MECKLENBURG-SCHWERIN.

DECLARATION OF ACCESSION TO THE CONVENTION FOR THE EXTRADITION OF CRIMINALS, FUGITIVE FROM JUSTICE, OF JUNE 16, 1852, BETWEEN THE UNITED STATES AND PRUSSIA AND OTHER STATES OF THE GERMANIC CONFEDERATION, AND TO ADDITIONAL ARTICLE THERETO OF NOVEMBER 16, 1852.

*Dated November 26, 1853; Proclaimed January 6, 1854.*

[Translation.]

Whereas a treaty for the reciprocal extradition of fugitive criminals in special cases was concluded between Prussia and other States of the Germanic Confederation on the one hand, and the United States of North America on the other, under date of June 16th, 1852, at Washington, by the Plenipotentiaries of the contracting parties, and has been ratified by the contracting Governments; and whereas, in the second article of the same, the United States of North America have declared that they agree that the stipulations of the aforesaid treaty shall be applicable to every other State of the Germanic Confederation which shall have subsequently declared its accession to the treaty: Now, therefore, in accordance therewith, the Government of His Royal Highness the Grand Duke of Mecklenburg-Schwerin hereby declares, through the undersigned

Grand Ducal Minister of Foreign Affairs, its accession to the aforesaid treaty of June 16th, 1852, which is, word for word, as follows : —

[The original declaration here includes a copy, in German and English, of the treaty of June 16th, 1852, and of the additional article thereto of November 16, 1852.]

and hereby expressly gives assurance that each and every article and stipulation of this treaty shall be faithfully observed and enforced within the territory of the Grand Duchy of Mecklenburg-Schwerin.

In testimony whereof, the Grand Ducal Minister of Foreign Affairs, in the name of His Royal Highness the Grand Duke of Mecklenburg-Schwerin, has executed this declaration of accession, and caused the Ministerial Seal to be thereunto affixed.

Done at Schwerin, November 26th, 1853.

[SEAL.]

GR. V. BULOW,  
*Grand Ducal Minister of Foreign Affairs  
of Mecklenburg-Schwerin.*

### MECKLENBURG-STRELITZ.

DECLARATION OF ACCESSION TO THE CONVENTION FOR THE EXTRADITION OF CRIMINALS, FUGITIVE FROM JUSTICE, OF JUNE 16, 1852, BETWEEN THE UNITED STATES AND PRUSSIA AND OTHER STATES OF THE GERMANIC CONFEDERATION.

*Dated December 2, 1853; Proclaimed January 26, 1854.*

[Translation.]

Whereas a treaty for the reciprocal extradition of fugitive criminals, in special cases, was concluded between Prussia and other States of the Germanic Confederation on the one hand, and the United States of North America on the other, under date of June 16th, 1852, at Washington, by the Plenipotentiaries of the contracting parties, and has been ratified by the contracting Governments; and whereas, in the second article of the same, the United States of North America have declared that they agree that the stipulations of the aforesaid treaty shall be applicable to every other State of the Germanic Confederation which shall have subsequently declared its accession to the treaty: Now, therefore, in accordance therewith, the Government of His Royal Highness

the Grand Duke of Mecklenburg-Strelitz, hereby declares its accession to the aforesaid treaty of June 16th, 1852, which is, word for word, as follows : —

[The original declaration here includes a copy, in German, of the treaty of June 16, 1852.]

and hereby expressly gives assurance that each and every article and stipulation of this treaty shall be faithfully observed and enforced within the territory of the Grand Duchy of Mecklenburg-Strelitz.

In testimony whereof, the undersigned Grand Ducal Minister of State, in the name of His Royal Highness the Grand Duke of Mecklenburg-Strelitz, has executed this declaration of accession, and caused the seal of the Grand Ducal Ministry of State to be thereunto affixed.

Done at Neustrelitz the second day of December, 1853.

[SEAL.]

P. V. KANDORFF,  
Grand Ducal Minister of State.  
DRISCHOW.

### MEXICO.

*Concluded December 11, 1861 ; Ratifications exchanged at Mexico, May 20, 1862 ; Proclaimed June 20, 1862.*

The United States of America and the United Mexican States, having judged it expedient, with a view to the better administration of justice and to the prevention of crime within their respective territories and jurisdictions, that persons charged with the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up, have resolved to conclude a treaty for this purpose, and have named as their respective Plenipotentiaries, that is to say :

The President of the United States of America has appointed Thomas Corwin, a citizen of the United States and their Envoy Extraordinary and Minister Plenipotentiary near the Mexican Government ; and the President of the United Mexican States has appointed Sebastian Lerdo de Tejada, a citizen of the said States and a Deputy of the Congress of the Union ;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following articles :—

**ARTICLE I.** It is agreed that the contracting parties shall, on requisitions made in their name, through the medium of their respective diplomatic agents, deliver up to justice persons who, being accused of the crimes enumerated in article third of the present treaty, committed within the jurisdiction of the requiring party, shall seek an asylum, or shall be found within the territories of the other : *Provided*, That this shall be done only when the fact of the commission of the crime shall be so established as that the laws of the country in which the fugitive or the person so accused shall be found, would justify his or her apprehension and commitment for trial if the crime had been there committed.

**ARTICLE II.** In the case of crimes committed in the frontier States or Territories of the two contracting parties, requisitions may be made through their respective diplomatic agents, or through[h] the chief civil authority of said States or Territories, or through such chief civil or judicial authority of the districts or counties bordering on the frontier as may for this purpose be duly authorized by the said chief civil authority of the said frontier States or Territories, or when, from any cause, the civil authority of such State or Territory shall be suspended, through the chief military officer in command of such State or Territory.

**ARTICLE III.** Persons shall be so delivered up who shall be charged, according to the provisions of this treaty, with any of the following crimes, whether as principals, accessories, or accomplices, to wit: Murder (including assassination, parricide, infanticide, and poisoning); assault with intent to commit murder; mutilation; piracy; arson; rape; kidnapping, defining the same to be the taking and carrying away of a free person by force or deception; forgery, including the forging or making, or knowingly passing or putting in circulation counterfeit coin or bank notes, or other paper current as money, with intent to defraud any person or persons; the introduction or making of instruments for the fabrication of counterfeit coin or bank notes, or other paper current as money; embezzlement of public moneys; robbery, defining the same to be the felonious and forcible taking from the person of another of goods or money to any value, by violence or putting him in fear; burglary, defining the same to be breaking and entering into the house of another with intent to commit felony; and the crime of larceny of cattle, or other goods and chattels, of the value of twenty-five dollars or more, when the same is com-



mitted within the frontier States or Territories of the contracting parties.

ARTICLE IV. On the part of each country the surrender of fugitives from justice shall be made only by the authority of the executive thereof, except in the case of crimes committed within the limits of the frontier States and Territories, in which latter case the surrender may be made by the chief civil authority thereof, or such chief civil or judicial authority of the districts or counties bordering on the frontier as may for this purpose be duly authorized by the said chief civil authority of the said frontier States or Territories, or if, from any cause, the civil authority of such State or Territory shall be suspended, then such surrender may be made by the chief military officer in command of such State or Territory.

ARTICLE V. All expenses whatever of detention and delivery effected in virtue of the preceding provisions shall be borne and defrayed by the Government or authority of the frontier State or Territory in whose name the requisition shall have been made.

ARTICLE VI. The provisions of the present treaty shall not be applied in any manner to any crime or offence of a purely political character, nor shall it embrace the return of fugitive slaves, nor the delivery of criminals who, when the offence was committed, shall have been held in the place where the offence was committed in the condition of slaves, the same being expressly forbidden by the Constitution of Mexico; nor shall the provisions of the present treaty be applied in any manner to the crimes enumerated in the third article committed anterior to the date of the exchange of the ratifications hereof.

Neither of the contracting parties shall be bound to deliver up its own citizens under the stipulations of this treaty.

ARTICLE VII. This treaty shall continue in force until it shall be abrogated by the contracting parties, or one of them; but it shall not be abrogated except by mutual consent, unless the party desiring to abrogate it shall give twelve months' previous notice.

ARTICLE VIII. The present treaty shall be ratified in conformity with the Constitutions of the two countries, and the ratifications shall be exchanged at the city of Mexico within six months from the date hereof, or earlier if possible.

In witness whereof we, the Plenipotentiaries of the United States of America and of the United Mexican States, have signed and sealed these presents.



Done in the city of Mexico on the eleventh day of December, in the year of our Lord one thousand eight hundred and sixty-one, the eighty-sixth of the Independence of the United States of America, and the forty-first of that of the United Mexican States.

[SEAL.]

THOS. CORWIN.

[SEAL.]

SEB'N LERDO DE TEJADA.

### NETHERLANDS.

*Concluded May 22, 1880; Ratifications exchanged at Washington, July 29, 1880; Proclaimed July 30, 1880.*<sup>1</sup>

The United States of America and His Majesty the King of the Netherlands having judged it expedient, with a view to the better administration of justice and the prevention of crime within their respective territories and jurisdictions, that persons charged with, or convicted of, the crimes hereinafter enumerated, and being fugitives from justice, should under certain circumstances be reciprocally delivered up, have resolved to conclude a convention for that purpose, and have appointed as their Plenipotentiaries :

The President of the United States, William Maxwell Evarts, Secretary of State of the United States, and His Majesty the King of the Netherlands, Jonkheer, Rudolph Alexander August Edward von Pestel, Knight of the Order of the Netherlands Lion, His Majesty's Minister Resident in the United States ; who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following articles : —

ARTICLE I. The United States of America and his Majesty the King of the Netherlands reciprocally engage to deliver up to justice all persons convicted of or charged with any of the crimes or offences enumerated in the following article, committed within the respective jurisdiction of the United States of America, or of the Kingdom of the Netherlands, exclusive of the Colonies thereof, such persons being actually within such jurisdiction when the crime or offence was committed, who shall seek an asylum or shall be found within the jurisdiction of the other, exclusive of the colonies of the Netherlands : Provided, That this shall only be done upon such

<sup>1</sup> See article xiii. of succeeding convention.

evidence of criminality as, according to the laws of the place where the fugitive so charged shall be found, would justify his apprehension and commitment for trial, if the crime or offence had been there committed.

ARTICLE II. Persons shall be delivered up, according to the provisions of this convention, who shall have been charged with, or convicted of, any of the following crimes : —

1. Murder, comprehending the crimes of assassination, parricide, infanticide, and poisoning.

2. The attempt to commit murder.

3. Rape.

4. Arson.

5. Burglary ; or the corresponding crime in the Netherlands law under the description of thefts committed in an inhabited house by night, and by breaking in, by climbing, or forcibly.

6. The act of breaking into and entering public offices, or the offices of banks, banking-houses, savings-banks, trust companies, or insurance companies, with intent to commit theft therein ; and also the thefts resulting from such act.

7. Robbery ; or the corresponding crime punished in the Netherlands law under the description of theft committed with violence or by means of threats.

8. Forgery, or the utterance of forged papers, including the forgery or falsification of official acts of the Government or public authority or courts of justice, affecting the title or claim to money or property.

9. The counterfeiting, falsifying, or altering of money, whether coin or paper, or of bank notes, or instruments of debt created by National, State, or Municipal Governments, or coupons thereof, or of seals, stamps, dies, or marks of state ; or the utterance or circulation of the same.

10. Embezzlement by public officers charged with the custody or receipt of public funds.

11. Embezzlement by any person or persons hired or salaried, to the detriment of their employers, where the offence is subject to punishment by the law of the Netherlands as *abus de confiance*, if extradition is demanded by the United States, or is subject to punishment as a crime in the United States, if extradition is demanded by the Netherlands.

ARTICLE III. The provisions of this Convention shall not apply

to any crime or offence of a political character, nor to acts connected with such crimes or offences; and no person surrendered under the provision hereof shall in any case be tried or punished for a crime or offence of a political character, nor for any act connected therewith, committed previously to his extradition.

ARTICLE IV. The present Convention shall not apply to any crime or offence committed previous to the exchange of the ratifications hereof; and no person shall be tried or punished after surrender for any crime or offence other than that for which he was surrendered if committed previous to his surrender, unless such crime or offence be one of those enumerated in Article II. hereof, and shall have been committed subsequent to the exchange of ratifications.

ARTICLE V. A fugitive criminal shall not be surrendered under the provisions hereof when, by lapse of time, he is exempt from prosecution or punishment for the crime or offence for which the surrender is asked, according to the laws of the country from which the extradition is demanded, or when his extradition is asked for the same crime or offence for which he has been tried, convicted, or acquitted in that country, or so long as he is under prosecution for the same.

ARTICLE VI. If a fugitive criminal, whose extradition may be claimed pursuant to the stipulations hereof, be actually under prosecution for a crime or offence in the country where he has sought asylum, or shall have been convicted thereof, his extradition may be deferred until such proceedings be terminated, and until such criminal shall be set at liberty in due course of law.

ARTICLE VII. If a fugitive criminal claimed by one of the parties hereto shall also be claimed by one or more powers, pursuant to treaty provisions on account of crimes committed within their jurisdiction, such criminal shall be delivered in preference in accordance with that demand which is the earliest in date.

ARTICLE VIII. Neither of the contracting parties shall be bound to deliver up, under the stipulations of this convention, its own citizens or subjects.

ARTICLE IX. The expenses of the arrest, detention, examination and transportation of the accused shall be paid by the government which has preferred the demand for extradition.

ARTICLE X. Everything found in the possession of the fugitive criminal, at the time of his arrest, which may be material as evi-

dence in making proof of the crime, shall, so far as practicable according to the laws or practice in the respective countries, be delivered up with his person at the time of surrender. Nevertheless, the rights of third parties, with regard to all such articles, shall be duly respected.

ARTICLE XI. Requisitions for the surrender of fugitives from justice shall be made by the respective diplomatic agents of the contracting parties. In the event of the absence of such agents from the country, or its seat of government, requisition may be made by consular officers.

When the person whose extradition shall have been asked, shall have been convicted of the crime, a copy of the sentence of the court in which he may have been convicted, authenticated under its seal and accompanied by an attestation of the official character of the judge by the proper authority, shall be furnished.

If, however, the fugitive is merely charged with crime, a duly authenticated copy of the warrant of arrest in the country where the crime was committed, and of the depositions upon which such warrant may have been issued, shall be produced, authenticated as above provided, with such other evidence or proof as may be deemed competent in the case.

If, after an examination, it shall be decided, according to the law and evidence, that extradition is due pursuant to this convention, the fugitive shall be surrendered according to the forms of law prescribed in such cases.

ARTICLE XII. The present convention shall take effect on the twentieth day after its promulgation in the manner prescribed by the laws of the respective countries. After the convention shall so have gone into operation, it shall continue until one of the two parties shall give to the other six months notice of its desire to terminate it.

This convention shall be ratified, and the ratifications shall be exchanged at Washington or the Hague as soon as possible.

In testimony whereof the respective Plenipotentiaries have signed the present convention, in duplicate, and have hereunto affixed their seals.

Done at Washington, in the English and Dutch languages, on the twenty-second day of May in the year of our Lord eighteen hundred and eighty.

[SEAL.]

[SEAL.]

WILLIAM MAXWELL EVARTS.

RUDOLPH VON PESTEL.

*Concluded June 2, 1887; Ratifications exchanged, May 31, 1889; Proclaimed June 21, 1889.*

The United States of America and His Majesty the King of the Netherlands having judged it expedient, with a view to the better administration of justice and the prevention of crime within their respective territories and jurisdictions, that persons charged with, or convicted of, the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up, have resolved to conclude a new convention for that purpose, and have appointed as their Plenipotentiaries: —

The President of the United States of America; Thomas F. Bayard, Secretary of State of the United States, and

His Majesty the King of the Netherlands; William Ferdinand Henry von Weckherlin, His Majesty's Envoy Extraordinary and Minister Plenipotentiary to the United States, who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following articles: —

**ARTICLE I.** The United States of America and His Majesty the King of the Netherlands reciprocally engage to deliver up to justice all persons convicted of or charged with any of the crimes or offences enumerated in the following article, committed within the respective jurisdiction of the United States of America, or of the Kingdom of the Netherlands, exclusive of the Colonies thereof, such persons being actually within such jurisdiction when the crime or offence was committed, who shall seek an asylum or shall be found within the jurisdiction of the other, exclusive of the Colonies of the Netherlands: Provided, That this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive so charged shall be found, would justify his apprehension and commitment for trial, if the crime or offence had been there committed.

**ARTICLE II.** Persons shall be delivered up, according to the provisions of this convention, who shall have been charged with, or convicted of, any of the following crimes: —

1. Murder, including infanticide; manslaughter.
2. Rape, bigamy, abortion.
3. Arson.
4. Mutiny, and rebellion on shipboard by two or more passen-

gers against the authority of the commander of the ship, or by the crew or part of the crew, against the commander or the ship's officers.

5. Burglary; or the corresponding crime in the Netherlands law under the description of thefts committed in an inhabited house by night, and by breaking in, by climbing, or forcibly.

6. The act of breaking into and entering public offices or the offices of banks, banking houses, savings-banks, trust-companies, or insurance companies, with intent to commit theft therein; and also the thefts resulting from such act.

7. Robbery; or the corresponding crime punished in the Netherlands law under the description of theft committed with violence or by means of threats.

8. Forgery, or the utterance of forged papers, including the forgery or falsification of official acts of the government or public authority or courts of justice affecting the title or claim to money or property.

9. The counterfeiting, falsifying or altering of money, whether coin or paper, or of instruments of debt created by national, state, provincial, or municipal governments, or coupons thereof, or of bank-notes, or the utterance or circulation of the same, or the counterfeiting, falsifying or altering of the seals of state.

10. Embezzlement by public officers.

11. Embezzlement by any person or persons hired or salaried, to the detriment of their employers, when the offence is subject to punishment by imprisonment by the laws of both countries.

12. Destruction or loss of a vessel on the high seas, or within the jurisdiction of the party asking the extradition, caused intentionally.

13. Kidnapping of minors, defined to be the abduction or detention of a minor for any unlawful end.

14. Obtaining by false devices money, valuables or other personal property, and the purchase of the same with the knowledge that they have been so obtained, when the crimes or offences are punishable by imprisonment or other corporal punishment by the laws of both countries.

15. Larceny, defined to be the theft of effects, personal property, or money.

16. Wilful and unlawful destruction or obstruction of railroads, which endangers human life.

Extradition shall also be granted for complicity in any of the crimes or offences enumerated in this article, provided that the persons charged with or convicted of such complicity may be punished as accessories with imprisonment of a year or more, by the laws of both countries.

Extradition may also be granted for the attempt to commit any of the crimes above enumerated, when such attempt is punishable with imprisonment of a year or more, by the laws of both contracting parties.

ARTICLE III. The provisions of this convention shall not apply to any crime or offence of a political character, nor to acts connected with such crimes or offences ; and no person surrendered under the provisions hereof shall in any case be tried or punished for a crime or offence of a political character, nor for any act connected therewith, committed previously to his extradition.

ARTICLE IV. No person shall be tried or punished, after surrender, for any crime or offence other than that for which he was surrendered, if committed previous to his surrender, unless such crime or offence be one of those enumerated in Article II. hereof.

ARTICLE V. A fugitive criminal shall not be surrendered under the provisions hereof when, by lapse of time, he is exempt from prosecution or punishment for the crime or offence for which the surrender is asked, according to the laws of the country from which the extradition is demanded, or when his extradition is asked for the same crime or offence for which he has been tried, convicted or acquitted in that country, or so long as he is under prosecution for the same.

ARTICLE VI. If the person whose extradition may be claimed pursuant to the stipulations hereof, be actually under prosecution for a crime or offence in the country where he has sought asylum, or shall have been convicted thereof, his extradition may be deferred until such proceedings be terminated, and until such criminal shall be set at liberty in due course of law.

ARTICLE VII. If the person claimed by one of the parties hereto shall also be claimed by one or more powers, pursuant to treaty provisions, on account of crimes committed within their jurisdiction, such criminal shall be delivered in preference, in accordance with that demand which is the earliest in date.

ARTICLE VIII. Neither of the contracting parties shall be bound to deliver up, under the stipulations of this convention, its own citizens or subjects.

**ARTICLE IX.** The expenses of the arrest, detention, examination and transportation of the accused shall be paid by the government which has preferred the demand for extradition.

**ARTICLE X.** All articles found in the possession of the fugitive criminal at the time of his arrest, which were obtained through the commission of the act of which he is convicted or with which he is charged, or which may be material as evidence in making proof of the crime, shall, so far as practicable according to the laws or practice in the respective countries, be delivered up with his person at the time of surrender. Nevertheless, the rights of third parties, with regard to all such articles, shall be duly respected.

**ARTICLE XI.** Requisitions for the surrender of fugitives from justice shall be made by the respective diplomatic agents of the contracting parties. In the event of the absence of such agents from the country, or its seat of government, requisition may be made by consular officers.

When the person whose extradition shall have been asked, shall have been convicted of the crime, a copy of the sentence of the court in which he may have been convicted, authenticated under its seal and accompanied by an attestation of the official character of the judge by the proper authority, shall be furnished.

If, however, the fugitive is merely charged with crime, a duly authenticated copy of the warrant of arrest in the country where the crime was committed, and of the depositions upon which such warrant may have been issued, shall be produced, authenticated as above provided, with such other evidence or proof as may be deemed competent in the case.

If, after an examination, it shall be decided, according to the law and evidence, that extradition is due pursuant to this convention, the fugitive shall be surrendered according to the forms of law prescribed in such cases.

**ARTICLE XII.** It shall be lawful for any competent judicial authority of the United States of America, upon production of a certificate issued by the Secretary of State that request has been made by the Government of the Netherlands for the provisional arrest of a person convicted or accused of the commission therein of a crime extraditable under this convention, and upon legal complaint that such crime has been so committed, to issue his warrant for the apprehension of such person. But if the formal requisition for surrender with the documentary proofs hereinbefore prescribed be not made as aforesaid, by the diplomatic agent of the demanding gov-



ernment, or, in his absence, by a consular officer thereof, within forty days from the date of the commitment of the person convicted or accused, the prisoner shall be discharged from custody.

And it shall be lawful for any competent judicial authority of the Netherlands, upon production of a certificate issued by the Minister of Foreign Affairs that request has been made by the Government of the United States for the provisional arrest of a person convicted or accused of the commission therein of a crime extraditable under this convention, to issue his warrant for the apprehension of such person. But if the formal requisition for surrender with the documentary proofs hereinbefore prescribed be not made as aforesaid by the diplomatic agent of the demanding government, or, in his absence, by a consular officer thereof, within forty days from the date of the arrest of the person convicted or accused, the prisoner shall be discharged from custody.

ARTICLE XIII. The present convention shall take effect on the twentieth day after its promulgation in the manner prescribed by the laws of the respective countries. On the same day the convention entered into by the two contracting parties on the 22d day of May, 1880, shall be abrogated and annulled. But the present convention shall be held to apply to crimes enumerated in the former convention and committed prior to its abrogation and annulment. And as to other crimes, the present convention shall not be held to operate retroactively.

After the present convention shall have gone into operation, it shall continue until one of the two parties shall give to the other six months' notice of its desire to terminate it.

This convention shall be ratified, and the ratifications shall be exchanged at Washington or The Hague as soon as possible.

In testimony whereof the respective Plenipotentiaries have signed the present convention, in duplicate, and have hereunto affixed their seals.

Done at the City of Washington the second day of June in the year of our Lord, one thousand eight hundred and eighty-seven.

[SEAL.]

T. F. BAYARD.

[SEAL.]

W. F. H. VON WECKHERLIN.

## NICARAGUA.

*Concluded June 25, 1870; Ratifications exchanged at Managua, June 24, 1871; Proclaimed September 19, 1871.*

The United States of America and the Republic of Nicaragua, having judged it expedient, with a view to the better administration of justice, and to prevention of crimes within their respective territories and jurisdiction, that persons convicted of, or charged with the crimes hereinafter mentioned, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up, have resolved to conclude a convention for that purpose, and have appointed as their Plenipotentiaries : —

The President of the United States, Charles N. Riotte, a citizen and Minister Resident of the United States in Nicaragua, the President of the Republic of Nicaragua, Mister Tomas Ayon, Minister for For[eign] Relations ;

Who, after reciprocal communication of their full powers, found in good and due form, have agreed upon the following articles, viz. :

ARTICLE I. The Government of the United States and the Government of Nicaragua mutually agree to deliver up persons who, having been convicted of or charged with the crimes specified in the following article, committed within the jurisdiction of one of the contracting parties, shall seek an asylum or be found within the territories of the other : Provided, that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his or her apprehension and commitment for trial, if the crime had been there committed.

ARTICLE II. Persons shall be delivered up, who shall have been convicted of, or be charged, according to the provisions of this convention, with any of the following crimes : —

1. Murder, comprehending assassination, parricide, infanticide, and poisoning.

2. The crimes of rape, arson, piracy, and mutiny on board a ship, whenever the crew, or part thereof, by fraud or violence against the commander, have taken possession of a vessel.

3. The crime of burglary, defined to be the action of breaking and entering by night into the house of another with the intent to commit felony ; and the crime of robbery, defined to be the action

of feloniously and forcibly taking from the person of another goods or money, by violence, or putting him in fear.

4. The crime of forgery, by which is understood the utterance of forged papers, the counterfeiting of public, sovereign, or government acts.

5. The fabrication or circulation of counterfeit money, either coin or paper, of public bonds, bank-notes, and obligations, and in general of all titles of instruments of credit, the counterfeiting of seals, dies, stamps, and marks of state and public administrations, and the utterance thereof.

6. The embezzlement of public moneys, committed within the jurisdiction of either party, by public officers or depositors.

7. Embezzlement by any person or persons hired or salaried, to the detriment of their employers, when these crimes are subjected to infamous punishment.

ARTICLE III. The provisions of this treaty shall not apply to any crime or offence of a political character, and the person or persons delivered up for the crimes enumerated in the preceding article, shall in no case be tried for any ordinary crime, committed previously to that for which his or their surrender is asked.

ARTICLE IV. If the person, whose surrender may be claimed pursuant to the stipulations of the present treaty, shall have been arrested for the commission of offences in the country where he has sought an asylum, or shall have been convicted thereof, his extradition may be deferred until he shall have been acquitted, or have served the term of imprisonment to which he may have been sentenced.

ARTICLE V. Requisitions for the surrender of fugitives from justice shall be made by the respective Diplomatic Agents of the contracting parties, or, in the event of the absence of these from the country or its seat of government, they may be made by superior consular officers. If the person whose extradition may be asked for shall have been convicted of a crime, a copy of the sentence of the court in which he may have been convicted, authenticated under its seal, and an attestation of the official character of the judge by the proper executive authority, and of the latter by the Minister or Consul of the United States or of Nicaragua, respectively, shall accompany the requisition. When, however, the fugitive shall have been merely charged with crime, a duly authenticated copy of the warrant for his arrest in the country where the crime may have been committed, and of the depositions upon which such

warrant may have been issued, must accompany the requisition as aforesaid. The President of the United States, or the proper executive authority in Nicaragua, may then issue a warrant for the apprehension of the fugitive, in order that he may be brought before the proper judicial authority for examining the question of extradition. If it should then be decided that, according to law and evidence, the extradition is due pursuant to this treaty, the fugitive may be given up according to the forms prescribed in such cases.

ARTICLE VI. The expenses of the arrest, detention, and transportation of the persons claimed shall be paid by the Government in whose name the requisition shall have been made.

ARTICLE VII. This convention shall continue in force during five (5) years from the day of exchange of ratifications; but if neither party shall have given to the other six (6) months previous notice of its intention to terminate the same, the convention shall remain in force five (5) years longer, and so on.

The present convention shall be ratified and the ratifications exchanged at the capital of Nicaragua, or any other place temporarily occupied by the Nicaraguan Government, within twelve (12) months, or sooner if possible.

In witness whereof the respective Plenipotentiaries have signed the present convention in duplicate, and have thereunto affixed their seals.

Done at the city of Managua, capital of the Republic of Nicaragua, the twenty-fifth day of June, one thousand eight hundred and seventy, of the Independence of the United States the ninety-fourth, and of the Independence of Nicaragua the fifty-ninth.

[SEAL.]

CHARLES N. RIOTTE.

[SEAL.]

TOMAS AYON.

#### NORTH GERMAN CONFEDERATION.

*Concluded February 22, 1868; Ratifications exchanged at Berlin, May 9, 1868; Proclaimed, May 27, 1868.*

ARTICLE III. The convention for the mutual delivery of criminals, fugitives from justice, in certain cases, concluded between the United States on the one part and Prussia and other States of Germany on the other part, the 16th day of June, 1852, is hereby extended to all the States of the North German Confederation.

**ARTICLE V.** The present convention shall go into effect immediately on the exchange of ratifications, and shall continue in force for ten years. If neither party shall have given to the other six months' previous notice of its intention then to terminate the same, it shall further remain in force until the end of twelve months after either of the contracting parties shall have given notice to the other of such intention.

GEORGE BANCROFT.  
BERNHARD KÖNIG.

BERLIN, February 22, 1868.

### OLDENBURG.

**DECLARATION OF ACCESSION TO THE CONVENTION FOR THE EXTRADITION OF CRIMINALS, FUGITIVE FROM JUSTICE, OF JUNE 16, 1852, BETWEEN THE UNITED STATES AND PRUSSIA AND OTHER STATES OF THE GERMANIC CONFEDERATION, AND TO ADDITIONAL ARTICLE THERETO OF NOVEMBER 16, 1852.**

*Signed December 30, 1853; Proclaimed March 21, 1853.*

[Translation.]

Whereas a treaty for the reciprocal extradition of fugitive criminals, in special cases, was concluded between Prussia and other States of the Germanic Confederation on the one hand, and the United States of North America on the other, under date of June 16th, 1852, at Washington, by the Plenipotentiaries of the contracting parties, and has been ratified by the contracting Governments; and whereas, in the second article of the same, the United States of North America have declared that they agree that the stipulations of the aforesaid treaty shall be applicable to every other State of the Germanic Confederation which shall have subsequently declared its accession to the treaty: Now, therefore, in accordance therewith, the Government of His Royal Highness the Grand Duke of Oldenburg hereby declares its accession to the aforesaid treaty of June 16th, 1852, which is, word for word, as follows:—

[The original declaration here includes a copy in German of the treaty of June 16, 1852, and of the additional article thereto of November 16, 1852.]

and hereby expressly gives assurance that each and every article

and stipulation of this treaty shall be faithfully observed and enforced within the territory of the Grand Duchy of Oldenburg.

In testimony whereof, the Grand Ducal Minister of State of Oldenburg, in the name of His Royal Highness the Grand Duke of Oldenburg, has executed the present declaration of accession, and caused the Ministerial seal to be affixed thereto.

Done at Oldenburg, December thirtieth, one thousand eight hundred and fifty-three.

[SEAL.]

VON RÖSSING,  
*Grand Ducal Minister of State of Oldenburg.*

### ORANGE FREE STATE.

*Concluded December 22, 1871; Ratifications exchanged at Washington, August 18, 1873; Proclaimed, August 23, 1873.*

ARTICLE VIII. The United States of America and the Orange Free State, on requisitions made in their name through the medium of their respective diplomatic or consular agents, shall deliver up to justice persons who, being charged with the crimes enumerated in the following article, committed within the jurisdiction of the requiring party, shall seek asylum or shall be found within the territories of the other.

*Provided*, That this shall be done only when the fact of the commission of the crime shall be so established as to justify their apprehension and commitment for trial, if the crime had been committed in the country where the person so accused, shall be found.

ARTICLE IX. Persons shall be delivered up according to the provisions of this convention, who shall be charged with any of the following crimes, to wit: Murder (including assassination, parricide, infanticide, and poisoning), attempt to commit murder, rape, forgery or the emission of forged papers, arson, robbery with violence, intimid[ation] or forcible entry of an inhabited house, piracy, embezzlement by public officers, or by persons hired or salaried, to the detriment of their employers, when these crimes are subject to infamous punishment.

ARTICLE X. The surrender shall be made by executives of the contracting parties respectively.

ARTICLE XI. The expense of detention and delivery effected pursuant to the preceding articles, shall be at the cost of the party making the demand.

**ARTICLE XII.** The provisions of the foregoing articles relating to the surrender of fugitive criminals, shall not apply to offences committed before the date hereof, nor to those of a political character.

### OTTOMAN PORTE.

*Concluded August 11, 1874; Ratifications exchanged at Constantinople, April 22, 1875; Proclaimed May 26, 1875.<sup>1</sup>*

The United States of America and His Imperial Majesty the Sultan, having judged it expedient, with a view to the better administration of justice and to the prevention of crimes within their respective territories and jurisdiction, that persons convicted of or charged with the crimes hereinafter specified, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up, have resolved to conclude a convention for that purpose, and have appointed as their Plenipotentiaries : —

The President of the United States, George H. Boker, Minister Resident of the United States of America near the Sublime Porte ; and His Imperial Majesty the Sultan, His Excellency A. Aarifi Pasha, his Minister for Foreign Affairs ; who, after reciprocal communication of their full powers, found in good and due form, have agreed upon the following articles, to wit : —

**ARTICLE I.** The Government of the United States and the Ottoman Government mutually agree to deliver up persons who, having been convicted of or charged with the crimes specified in the following article, committed within the jurisdiction of one of the contracting parties, shall seek an asylum or be found within the territories of the other : *Provided*, That this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his or her apprehension and commitment for trial, if the crime had been there committed.

**ARTICLE II.** Persons shall be delivered up who shall have been convicted of, or be charged, according to the provisions of this convention, with any of the following crimes : —

1st. Murder, comprehending the crimes designated by the terms of parricide, assassination, poisoning, and infanticide.

2d. The attempt to commit murder.

<sup>1</sup> See Extradition, chapter xxi. Turkey.

3d. The crimes of rape, arson, piracy, and mutiny on board a ship, whenever the crew, or part thereof, by fraud or violence against the commander, have taken possession of the vessel.

4th. The crime of burglary, defined to be the action of breaking and entering by night into the house of another with the intent to commit felony; and the crime of robbery, defined to be the action of feloniously and forcibly taking from the person of another goods or money, by violence, or putting him in fear.

5th. The crime of forgery, by which is understood the utterance of forged papers, the counterfeiting of public, sovereign, or government acts.

6th. The fabrication or circulation of counterfeit money, either coin or paper, of public bonds, bank-notes, and obligations, and in general of all things, being titles and instruments of credit, the counterfeiting of seals, dies, stamps, and marks of state and public administrations and the utterance thereof.

7th. The embezzlement of public moneys committed within the jurisdiction of either party, by public officers or depositors.

8th. Embezzlement by any person or persons hired or salaried, to the detriment of their employers, when these crimes are subject to infamous punishment.

ARTICLE III. The provisions of this treaty shall not apply to any crime or offence of a political character, and the person or persons delivered up for the crimes enumerated in the preceding article shall in no case be tried for any ordinary crime, committed previously to that for which his or their surrender is asked.

ARTICLE IV. If the person whose surrender may be claimed, pursuant to the stipulations of the present treaty, shall have been arrested for the commission of offences in the country where he has sought an asylum, or shall have been convicted thereof, his extradition may be deferred until he shall have been acquitted, or have served the term of imprisonment to which he may have been sentenced.

ARTICLE V. Requisitions for the surrender of fugitives from justice shall be made by the respective diplomatic agents of the contracting parties, or in the event of the absence of these from the country, or its seat of government, they may be made by superior consular officers. If the person whose extradition may be asked for shall have been convicted of a crime, a copy of the sentence of the court in which he may have been convicted, authenticated under its seal and an attestation of the official character of the judge by



the proper executive authority, and of the latter by the minister or consul of the United States or of the Sublime Porte, respectively, shall accompany the requisition. When, however, the fugitive shall have been merely charged with a crime, a duly authenticated copy of the warrant for his arrest in the country where the crime may have been committed, or<sup>1</sup> of the depositions upon which such warrant may have been issued, must accompany the requisition as aforesaid. The President of the United States or the proper executive authority in Turkey may then issue a warrant for the apprehension of the fugitive, in order that he may be brought before the proper judicial authority for examination. If it should then be decided that, according to law and the evidence, the extradition is due pursuant to the treaty, the fugitive may be given up according to the forms prescribed in such cases.

ARTICLE VI. The expense of the arrest, detention, and transportation of the persons claimed shall be paid by the government in whose name the requisition has been made.

ARTICLE VII. Neither of the contracting parties shall be bound to deliver up its own citizens under the stipulations of this treaty.

ARTICLE VIII. This convention shall continue in force during five (5) years from the day of exchange of ratification, but if neither party shall have given to the other six (6) months' previous notice of its intention to terminate the same, the convention shall remain in force five years longer, and so on.

The present convention shall be ratified, and the ratifications exchanged at Constantinople, within twelve (12) months, and sooner, if possible.

In witness whereof, the respective Plenipotentiaries have signed the present convention in duplicate, and have thereunto affixed their seals.

Done at Constantinople the eleventh day of August, one thousand eight hundred and seventy-four.

[SEAL.]

GEO. H. BOKER.

[SEAL.]

A. AARIFI.

<sup>1</sup> In the French text the word *et* (=and) follows the word *commis* (=committed.)

PERU.<sup>1</sup>

*Concluded September 12, 1870; Ratifications exchanged at Lima, May 28, 1874; Proclaimed July 27, 1874.*

The United States of America and the Republic of Peru, having judged it expedient, with a view to the better administration of justice and the prevention of crime within their respective territories and jurisdictions, that persons charged with the crimes hereinafter enumerated should, under certain circumstances, be reciprocally delivered up, have resolved to conclude a treaty for this purpose, and have named as their respective Plenipotentiaries, that is to say: the President of the United States of America has appointed Alvin P. Hovey, Envoy Extraordinary and Minister Plenipotentiary of the United States of America near the Government of the Republic of Peru; and the President of Peru has appointed his Excellency Doctor José Loayza, Minister of Foreign Affairs of Peru; who, after having communicated to each other their respective full powers, found in good and true form, have agreed upon and concluded the following articles:—

ARTICLE I. It is agreed that the contracting parties shall, on requisitions made in their name through the medium of their respective diplomatic agents, deliver up to justice persons who, being accused or convicted of the crimes enumerated in Article II. of the present treaty, committed within the jurisdiction of the requiring party, shall seek an asylum, or shall be found within the territories of the other: *Provided*, That this shall be done only when the fact of the commission of the crime shall be so established as that the laws of the country in which the fugitive or the person so accused shall be found would justify his or her apprehension and commitment for trial if the crime had been there committed.

ARTICLE II. Persons shall be so delivered up who shall be charged, according to the provisions of this treaty, with any of the following crimes, whether as principals, accessories, or accomplices, to wit: —

1. Murder, comprehending the crimes of parricide, assassination, poisoning, and infanticide.
2. Rape, abduction by force.
3. Bigamy.
4. Arson.

<sup>1</sup> Terminated March 31, 1886.

5. Kidnapping, defining the same to be the taking or carrying away of a person by force or deception.

6. Robbery, highway robbery, larceny.

7. Burglary, defined to be the action of breaking and entering by night-time into the house of another person with the intent to commit a felony.

8. Counterfeiting or altering money, the introduction or fraudulent commerce of and in false coin and money; counterfeiting the certificates or obligations of the Government, of bank-notes, and of any other documents of public credit, the uttering and use of the same; forging or altering judicial judgments or decrees of the Government or courts, of the seals, dies, postage-stamps, and revenue-stamps of the Government, and the use of the same; forging public and authentic deeds and documents, both commercial and of banks, and the use of the same.

9. Embezzlement of public moneys committed within the jurisdiction of either party by public officers or bailees, and embezzlement by any persons hired or salaried.

10. Fraudulent bankruptcy.

11. Fraudulent barratry.

12. Mutiny on board of a vessel, when the persons who compose the crew have taken forcible possession of the same or have transferred the ship to pirates.

13. Severe injuries intentionally caused on railroads, to telegraph lines, or to persons by means of explosion of mines or steam-boilers.

14. Piracy.

ARTICLE III. The provisions of the present treaty shall not be applied in any manner to any crime or offence of a purely political character, nor shall the provisions of the present treaty be applied in any manner to the crimes enumerated in the second article committed anterior to the date of the exchange of the ratification hereof. Neither of the contracting parties shall be bound to deliver up its own citizens under the stipulations of this treaty.

ARTICLE IV. The extradition will be granted in virtue of the demand made by the one Government on the other, with the remission of a condemnatory sentence, an order of arrest, or of any other process equivalent to such order, in which will be specified the character and gravity of the imputed acts, and the dispositions of the penal laws relative to the case. The documents accompanying the demand for extradition shall be originals or certified copies, legally authorized by the tribunals or by a competent person. If

possible, there shall be remitted at the same time a descriptive list of the individual required, or any other proof towards his identity.

ARTICLE V. If the person accused or condemned is not a citizen of either of the contracting powers, the Government granting the extradition will inform the Government of the country to which the accused or condemned may belong of the demand made, and if the last-named Government reclaims the individual on its own account for trial in its own tribunals, the Government to which was made the demand of extradition may, at will, deliver the criminal to the State in whose territories the crime was committed, or to that to which the criminal belongs. If the accused or sentenced person whose extradition may be demanded, in virtue of the present convention, from one of the contracting parties, should at the same time be the subject of claims from one or other Governments simultaneously for crimes or misdemeanors committed in their respective territories, he or she shall be delivered up to that Government in whose territories the offence committed was of the gravest character; and when the offences are of like nature and gravity, the delivery will be made to the Government making the first demand; and if the dates of the demands be the same, that of the nation of which the criminal may belong will be preferred.

ARTICLE VI. If the person claimed is accused or sentenced in the country where he may have taken refuge, for a crime or misdemeanor committed in that country, his delivery may be delayed until the definitive sentence releasing him be pronounced, or until such time as he may have complied with the punishment inflicted on him in the country where he took refuge.

ARTICLE VII. In cases not admitting of delay, and especially in those where there is danger of escape, each of the two Governments, authorized by the order for apprehension, may, by the most expeditious means, ask and obtain the arrest of the person accused or sentenced, on condition of presenting the said order for apprehension as soon as may be possible, not exceeding four months.

ARTICLE VIII. All expenses whatever of detention and delivery effected in virtue of the preceding provisions shall be borne and defrayed by the Government in whose name the requisition shall have been made.

ARTICLE IX. This treaty shall commence from the date of the exchange of the ratifications, and shall continue in force until it shall be abrogated by the contracting parties or one of them; but it shall not be abrogated, except by mutual consent, unless the

party desiring to abrogate it shall give twelve months' previous notice.

ARTICLE X. The present treaty shall be ratified in conformity with the constitutions of the two countries, and the ratifications shall be exchanged at the cities of Washington or Lima, within eighteen months from the date hereof, or sooner if possible.

In witness whereof we, the Plenipotentiaries of the United States of America and the Republic of Peru, have signed and sealed these presents.

Done in the city of Lima, in duplicate, English and Spanish, this the twelfth day of September, in the year of our Lord one thousand eight hundred and seventy.

[SEAL.]

ALVIN P. HOVEY.

[SEAL.]

JOSÉ J. LOAYZA.

## PRUSSIA AND OTHER STATES OF THE GERMANIC CONFEDERATION.

*Concluded June 16, 1852; Ratifications exchanged at Washington, May 30, 1853; Proclaimed, June 1, 1853.*

Whereas it is found expedient, for the better administration of justice and the prevention of crime within the territories and jurisdiction of the parties respectively, that persons committing certain heinous crimes, being fugitives from justice, should, under certain circumstances, be reciprocally delivered up, and also to enumerate such crimes explicitly; and whereas the laws and constitution of Prussia, and of the other German States, parties to this convention, forbid them to surrender their own citizens to a foreign jurisdiction, the Government of the United States, with a view of making the convention strictly reciprocal, shall be held equally free from any obligation to surrender citizens of the United States: Therefore, on the one part, the United States of America, and, on the other part, His Majesty the King of Prussia, in his own name, as well as in the name of His Majesty the King of Saxony, His Royal Highness the Elector of Hesse, His Royal Highness the Grand Duke of Hesse and on Rhine, His Royal Highness the Grand Duke of Saxe-Weimar-Eisenach, His Highness the Duke Saxe-Meiningen, His Highness the Duke of Saxe-Altenburg, His Highness the Duke of Saxe-Coburg-Gotha, His Highness the Duke of Brunswick, His Highness the Duke of Anhalt-Dessau, His

Highness the Duke of Anhalt-Beruburg, His Highness the Duke of Nassau, His Serene Highness the Prince Schwarzburg-Rudolstadt, His Serene Highness the Prince of Schwarzburg-Sondershausen, Her Serene Highness the Princess and Regent of Waldeck, His Serene Highness the Prince of Reuss, elder branch, His Serene Highness the Prince of Reuss, junior branch, His Serene Highness the Prince of Lippe, His Serene Highness the Landgrave of Hesse-Homburg, as well as the free city of Francfort, having resolved to treat on this subject, have for that purpose appointed their respective Plenipotentiaries to negotiate and conclude a convention, that is to say : —

The President of the United States of America, Daniel Webster, Secretary of State, and His Majesty the King of Prussia in his own name, as well as in the name of the other German Sovereigns above enumerated, and the free city of Francfort, Frederic Charles Joseph von Gerolt, his said Majesty's Minister Resident near the Government of the United States ;

Who, after reciprocal communication of their respective powers, have agreed to and signed the following articles : —

ARTICLE I. It is agreed that the United States and Prussia, and the other States of the Germanic Confederation included in or which may hereafter accede to this convention, shall upon mutual requisitions by them or their ministers, officers, or authorities, respectively made, deliver up to justice all persons who, being charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged papers, or the fabrication or circulation of counterfeit money, whether coin or paper money, or the embezzlement of public moneys committed within the jurisdiction of either party, shall seek an asylum, or shall be found within the territories of the other : *Provided*, That this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the crime or offence had there been committed ; and the respective judges and other magistrates of the two Governments shall have power, jurisdiction, and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, that he may be brought before such judges or other magistrates respectively, to the end that the evidence of criminality may be heard and considered ; and if, on such hearing, the evidence be deemed sufficient to

sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive. The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition and receives the fugitive.

ARTICLE II. The stipulations of this convention shall be applied to any other State of the Germanic Confederation which may hereafter declare its accession thereto.

ARTICLE III. None of the contracting parties shall be bound to deliver up its own citizens or subjects under the stipulations of this convention.

ARTICLE IV. Whenever any person accused of any of the crimes enumerated in this convention shall have committed a new crime in the territories of the State where he has sought an asylum, or shall be found, such person shall not be delivered up under the stipulations of this convention until he shall have been tried, and shall have received the punishment due to such new crime, or shall have been acquitted thereof.

ARTICLE V. The present convention shall continue in force until the 1st of January, 1858, and if neither party shall have given to the other six months' previous notice of its intention then to terminate the same, it shall further remain in force until the end of twelve months after either of the high contracting parties shall have given notice to the other of such intention; each of the high contracting parties reserving to itself the right of giving such notice to the other, at any time after the expiration of the said first day of January, 1858.

ARTICLE VI. The present convention shall be ratified by the President, by and with the advice and consent of the Senate of the United States, and by the Government of Prussia, and the ratifications shall be exchanged at Washington within six months from the date hereof, or sooner if possible.

In faith whereof we, the respective Plenipotentiaries, have signed this convention, and have hereunto affixed our seals.

Done in triplicate at Washington, the sixteenth day of June, one thousand eight hundred and fifty-two, and the seventy-sixth year of the Independence of the United States.

[SEAL.]

[SEAL.]

DAN'L WEBSTER.

FR. V. GEROLT.



*By the President of the United States of America.*

A PROCLAMATION.

Whereas it is provided by the second Article of the convention of the 16th of June, 1852, between the United States and Prussia and other States of the Germanic Confederation, for the mutual delivery of criminals, fugitives from justice, in certain cases, that the stipulations of that convention shall be applied to any other State of the Germanic Confederation which might thereafter declare its accession thereto;

And whereas the Free Hanseatic city of Bremen has declared its accession to the said convention, and the exchange of the said declaration for my acceptance of the same was made at Washington on the 14th instant by Rudolph Schleiden, Minister Resident of the said Free Hanseatic city of Bremen, and William L. Marcy, Secretary of State of the United States, on behalf of their respective governments:

Now, therefore, be it known, that I, FRANKLIN PIERCE, President of the United States of America, have caused this information to be made public, in order that the stipulations of the said convention may be observed and fulfilled with good faith in respect to the Free Hanseatic city of Bremen by the United States and the citizens thereof.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at Washington the fifteenth day of October, in the year of our Lord one thousand eight hundred and fifty-three, and of the Independence of the United States the seventy-eighth.

[SEAL.]

FRANKLIN PIERCE.

By the President:

W. L. MARCY, *Secretary of State.*

[Notice of the accession of the Governments of Mecklenburg-Schwerin, Mecklenburg-Strelitz, Oldenburg, Schaumburg-Lippe, and Würtemberg to the foregoing convention of June 16, 1852, with Prussia and other States of the Germanic Confederation, and to the additional article thereto of November 16, 1852, with the date of such accession, and that of the proclamation of the fact by the President, will be found under the names of the respective States in their alphabetical order. The additional article merely extended the time for the exchange of ratifications of the convention to a year from November 16, 1852.]



## SALVADOR.

*Concluded May 23, 1870; Ratifications exchanged at Washington, March 2, 1874: Proclaimed March 4, 1874.*

The United States of America and the Republic of Salvador, having judged it expedient, with a view to the better administration of justice, and to the prevention of crimes within their respective territories and jurisdiction, that persons convicted of or charged with the crimes hereinafter specified, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up, have resolved to conclude a convention for that purpose, and have appointed as their Plenipotentiaries, the President of the United States, Alfred T. A. Torbert, Minister Resident to Salvador; the President of the Republic of Salvador, Señor Doctor Don Gregorio Arbizú, Minister of Foreign Affairs; who, after a reciprocal communication of their full powers, found in good and due form, have agreed upon the following articles, to wit: —

ARTICLE I. The Government of the United States and the Government of Salvador mutually agree to deliver up persons who, having been convicted of or charged with the crimes specified in the following article, committed within the jurisdiction of one of the contracting parties, shall seek an asylum or be found within the territories of the other: *Provided*, That this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his or her apprehension and commitment for trial if the crime had been there committed.

ARTICLE II. Persons shall be delivered up who shall have been convicted of, or be charged, according to the provisions of this convention, with any of the following crimes: —

1. Murder, comprehending the crimes designated in the penal codes of the contracting parties by the terms homicide, parricide, assassination, poisoning, and infanticide.

2. The attempt to commit murder.

3. The crimes of rape, arson, piracy, and mutiny on board a ship, whenever the crew, or part thereof, by fraud or violence against the commander, have taken possession of the vessel.

4. The crime of burglary, defined to be the action of breaking and entering by night into the house of another with the intent to commit felony; and the crime of robbery, defined to be the action

of feloniously and forcibly taking from the person of another goods or money by violence, or putting him in fear.

5. The crime of forgery, by w[h]ich is understood the utterance of forged papers, the counterfeiting of public, sovereign, or government acts.

6. The fabrication or circulation of counterfeit money, either coin or paper, of public bonds, bank-notes, and obligations, and in general of all things being titles or instruments of credit, the counterfeiting of seals, dies, stamps, and marks of state and public administration, and the utterance thereof.

7. The embezzlement of public moneys, committed within the jurisdiction of either party, by public officers or depositors.

8. Embezzlement, by any person or persons, hired or salaried, to the detriment of their employers, when these crimes are subject to infamous punishment.

ARTICLE III. The provisions of this treaty shall not apply to any crime or offence of a political character; and the person or persons delivered up for the crimes enumerated in the preceding article shall in no case be tried for any ordinary crime committed previously to that for which his or their surrender is asked.

ARTICLE IV. If the person whose surrender may be claimed, pursuant to the stipulations of the present treaty, shall have been arrested for the commission of offences in the country where he has sought an asylum,<sup>1</sup> shall have been convicted therefor, his extradition may be deferred until he shall have been acquitted, or have served the term of imprisonment to which he may have been sentenced.

ARTICLE V. In no case and for no motive shall the high contracting parties be obliged to deliver up their own subjects. If, in conformity with the laws in force in the state to which the accused belongs, he ought to be submitted to criminal procedure for crimes committed in the other state, the latter must communicate the information and documents, send the implements or tools which were employed to perpetrate the crime, and procure every other explanation or evidence necessary to prosecute the case.

ARTICLE VI. Requisitions for the surrender of fugitives from justice shall be made by the respective diplomatic agents of the contracting parties, or in the event of the absence of these from

<sup>1</sup> In the Spanish text the conjunction "O" (=or) appears after the word "asilo" (=asylum); the non-appearance of the corresponding word in the English text appears to be a clerical omission.

the country, or its seat of government, they may be made by superior consular officers. If the person whose extradition may be asked for shall have been convicted of a crime, a copy of the sentence of the court in which he may have been convicted, authenticated under its seal, and an attestation of the official character of the judge by the proper executive authority, and of the latter by the minister or consul of the United States or of Salvador, respectively, shall accompany the requisition. When, however, the fugitive shall have been merely charged with crime, a duly authenticated copy of the warrant for his arrest in the country where the crime may have been committed, or the depositions upon which such warrant may have been issued, must accompany the requisition aforesaid. The President of the United States or the President of Salvador may then issue a warrant for the apprehension of the fugitive, in order that he may be brought before the proper judicial authority for examination. If it should then be decided that, according to law and the evidence, the extradition is due, pursuant to the treaty, the fugitive may be given up, according to the forms prescribed in such cases.

ARTICLE VII. The expenses of the arrest, detention, and transportation of the persons claimed shall be paid by the government in whose name the requisition shall have been made.

ARTICLE VIII. This convention shall continue in force during (10) ten years from the day of exchange of ratifications; but if neither party shall have given to the other (6) six months' previous notice of its intention to terminate the same, the convention shall remain in force ten years longer, and so on.

The present convention shall be ratified and the ratifications exchanged at the city of Washington within (12) twelve months, and sooner if possible.

In witness whereof, the respective Plenipotentiaries have signed the present convention in duplicate, and have thereunto affixed their seals.

Done at the city of San Salvador the twenty-third day of May, A. D. one thousand eight hundred and seventy, and of the Independence of the United States the ninety-fourth.

[SEAL.]

[SEAL.]

ALFRED T. A. TORBERT.

GREGO. ARBIZÜ.

## SCHAUMBURG-LIPPE.

DECLARATION OF ACCESSION TO THE CONVENTION FOR THE EXTRADITION OF CRIMINALS, FUGITIVE FROM JUSTICE, OF JUNE 16, 1852, BETWEEN THE UNITED STATES AND PRUSSIA AND OTHER STATES OF THE GERMANIC CONFEDERATION, AND TO ADDITIONAL ARTICLE THERETO OF NOVEMBER 16, 1852.

*Dated June 7, 1854; Proclaimed July 26, 1854.*

[Translation.]

Whereas a treaty for the reciprocal extradition of fugitive criminals, in special cases, was concluded between Prussia and other States of the Germanic Confederation on the one hand, and the United States of North America on the other, under date of June 16th, 1852, at Washington, by the Plenipotentiaries of the contracting parties, and has been ratified by the contracting Governments; and whereas, in the second article of the same, the United States of North America have declared that they agree that the stipulations of the aforesaid treaty shall be applicable to any other State of the Germanic Confederation which shall have subsequently declared its accession to the treaty: Now, therefore, in accordance therewith, the Government of His Serene Highness the Reigning Prince of Schaumburg-Lippe, hereby declares its accession to the aforesaid treaty of June 16, 1852, which is, word for word, as follows: —

[The original declaration here includes a copy in German and English of the treaty of June 16, 1852, and of the additional article thereto of November 16, 1852.]

and hereby expressly gives assurance that each and every article and stipulation of this treaty shall be faithfully observed and enforced within the territory of the Principality of Schaumburg-Lippe.

In testimony whereof, the Government of the Prince, in the name of His Serene Highness the Reigning Prince of Schaumburg-Lippe, has executed the present declaration of accession, and caused the seal of the Government to be thereunto affixed.

Done at Buckeburg, the seventh day of June, one thousand eight hundred and fifty four.

The Government of the Prince of Schaumburg-Lippe.

[SEAL.]

V. SAUER.  
WERNER.

## SPAIN.

*Concluded January 5, 1877 ; Ratifications exchanged at Washington, February 21, 1877 ; Proclaimed February 21, 1877.*

The United States of America and His Majesty the King of Spain having judged it expedient, with a view to the better administration of justice and the prevention of crime within their respective territories and jurisdictions, that persons charged with or convicted of the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up, have resolved to conclude a Convention for that purpose, and have appointed, as their Plenipotentiaries, the President of the United States, Caleb Cushing, the Envoy Extraordinary and Minister Plenipotentiary of the United States near the Government of Spain ; and His Majesty the King of Spain, His Excellency Don Fernando Calderon y Collantes, his Minister of State, Knight Grand Cross of the Royal and distinguished Order of Carlos Tercero, of those of Leopold of Austria and of Belgium, of that of our Lord Jesus Christ of Portugal, of the Savior of Greece, of the Holy Sepulchre, and of the Nishan Iftijar of Tunis ; who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following articles : —

**ARTICLE I.** It is agreed that the Government of the United States and the Government of Spain shall, upon mutual requisition duly made as herein provided, deliver up to justice all persons who may be charged with, or who have been convicted of, any of the crimes specified in Article II. of this Convention, committed within the jurisdiction of one of the contracting parties, while said persons were actually within such jurisdiction when the crime was committed, and who shall seek an asylum or shall be found within the territories of the other ; provided that such surrender shall take place only upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial if the crime or offence had been there committed.

**ARTICLE II.** Persons shall be delivered up, according to the provisions of this Convention, who shall have been charged with, or convicted of, any of the following crimes : —

1. Murder, comprehending the crimes designated by the terms of parricide, assassination, poisoning, or infanticide.

2. The attempt to commit murder.

3. Rape.

4. Arson.

5. Piracy or mutiny on board ship when the crew or other persons on board, or part thereof, have, by fraud or violence against the commander, taken possession of the vessel.

6. Burglary, defined to be the act of breaking and entering into the house of another in the night-time with intent to commit a felony therein.

7. The act of breaking and entering the offices of the Government and public authorities, or the offices of banks, banking-houses, saving-banks, trust companies, insurance companies, with intent to commit a felony therein.

8. Robbery, defined to be the felonious and forcible taking from the person of another, goods or money by violence or by putting him in fear.

9. Forgery, or the utterance of forged papers.

10. The forgery or falsification of the official acts of the Government or public authority, including courts of justice, or the uttering or fraudulent use of any of the same.

11. The fabrication of counterfeit money, whether coin or paper, counterfeit titles or coupons of public debt, bank-notes or other instruments of public credit; of counterfeit seals, stamps, dies, and marks of state or public administrations; and the utterance, circulation or fraudulent use of any of the above-mentioned objects.

12. The embezzlement of public funds, committed within the jurisdiction of one or the other party, by public officers or depositaries.

13. Embezzlement by any person or persons, hired or salaried, to the detriment of their employers, when these crimes are subject to infamous punishment.

14. Kidnapping, defined to be the detention of a person or persons in order to exact money from them or for any other unlawful end.

ARTICLE III. The provisions of this Convention shall not import claim of extradition for any crime or offence of a political character, not for acts connected with such crimes or offences; and no person surrendered by or to either of the contracting

parties in virtue of this Convention, shall be tried or punished for any political crime or offence, nor for any act connected therewith, committed previously to the extradition.

ARTICLE IV. No person shall be subject to extradition in virtue of this Convention for any crime or offence committed previous to the exchange of the ratifications hereof; and no person shall be tried for any crime or offence other than that for which he was surrendered, unless such crime be one of those enumerated in Article II., and shall have been committed subsequent to the exchange of the ratifications hereof.

ARTICLE V. A fugitive criminal shall not be surrendered under the provisions hereof when, from lapse of time or other lawful cause, according to the laws of the place within the jurisdiction of which the crime was committed, the criminal is exempt from prosecution or punishment for the offence for which the surrender is asked.

ARTICLE VI. If a fugitive criminal, whose surrender may be claimed pursuant to the stipulations hereof, be actually under prosecution, out on bail or in custody, for a crime or offence committed in the country where he has sought asylum, or shall have been convicted thereof, his extradition may be deferred until such proceedings be determined and until such criminal shall have been set at liberty in due course of law.

ARTICLE VII. If a fugitive criminal, claimed by one of the parties hereto shall be also claimed by one or more powers pursuant to treaty provisions on account of crimes committed within their jurisdiction, such criminal shall be delivered, in preference, in accordance with that demand which is the earliest in date.

ARTICLE VIII. Neither of the contracting parties shall be bound to deliver up its own citizens or subjects under the stipulations of this Convention.

ARTICLE IX. The expenses of the arrest, detention, examination, and transportation of the accused shall be paid by the Government which has preferred the demand for extradition.

ARTICLE X. Everything found in the possession of the fugitive criminal at the time of his arrest, which may be material as evidence in making proof of the crime, shall, so far as practicable, be delivered up with his person at the time of the surrender. Nevertheless, the rights of a third party, with regard to the articles aforesaid, shall be duly respected.

ARTICLE XI. The stipulations of this Convention shall be ap-

plicable to all foreign or colonial possessions of either of the two contracting parties.

Requisitions for the surrender of fugitives from justice shall be made by the respective diplomatic agents of the contracting parties. In the event of the absence of such agents from the country or its seat of government, or where extradition is sought from a colonial possession of one of the contracting parties, requisition may be made by superior consular officers.

It shall be competent for such representatives or such superior consular officers to ask and obtain a mandate or preliminary warrant of arrest for the person whose surrender is sought, whereupon the judges and magistrates of the two Governments shall, respectively, have power and authority, upon complaint made under oath, to issue a warrant for the apprehension of the person charged, in order that he or she may be brought before such judge or magistrate, that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of the fugitive.

If the fugitive criminal shall have been convicted of the crime for which his surrender is asked, a copy of the sentence of the court before which such conviction took place, duly authenticated, shall be produced. If, however, the fugitive is merely charged with crime, a duly authenticated copy of the warrant of arrest in the country where the crime was committed, and of the depositions upon which such warrant may have been issued, shall be produced, with such other evidence or proof as may be deemed competent in the case.

**ARTICLE XII.** This Convention shall continue in force from the day of the exchange of the ratifications thereof, but either party may at any time terminate the same on giving to the other six months' notice of its intention so to do.

In testimony whereof, the respective Plenipotentiaries have signed the present Convention in triplicate, and have hereunto affixed their seals.

Done at the city of Madrid, in triplicate, English and Spanish, this fifth day of January, in the year of our Lord one thousand eight hundred and seventy-seven.

[SEAL.]

CALEB CUSHING.

[SEAL.]

FERNDO. CALDERON Y COLLANTES.



CONVENTION FOR THE EXTRADITION OF CRIMINALS FUGITIVE  
FROM JUSTICE, BEING SUPPLEMENTAL TO THE CONVENTION  
OF JANUARY 5, 1877.

*Concluded August 7, 1882; Ratifications exchanged at Washington, April 19, 1883; Proclaimed April 19, 1883.*

The President of the United States of America and His Majesty the King of Spain, being satisfied of the propriety of adding some articles to the extradition convention concluded between the United States and Spain on the 5th day of January, 1877, with a view to the better administration of justice and the prevention of crime within their respective territories and jurisdictions, have resolved to conclude a supplementary convention for that purpose, and have appointed as their plenipotentiaries: —

The President of the United States, Frederick T. Frelinghuysen, Esquire, Secretary of State of the United States; and His Majesty the King of Spain, His Excellency Don Francisco Barca, Knight Grand Cross of the Royal American Order of Isabel la Católica, His Majesty's Envoy Extraordinary and Minister Plenipotentiary near the Government of the United States;

Who, after having reciprocally exhibited their full powers, found in good and due form, have agreed upon and concluded the following articles: —

ARTICLE I. Paragraph 5 of Article II. of the aforesaid Convention of January 5, 1877, is abrogated, and the following substituted:

5. Crimes committed at sea: —

(a) Piracy as commonly known and defined by the law of nations.

(b) Destruction or loss of a vessel caused intentionally, or conspiracy and attempt to bring about such destruction or loss, when committed by any person or persons on board of said vessel, on the high seas.

(c) Mutiny or conspiracy by two or more members of the crew or other persons on board of a vessel on the high seas, for the purpose of rebelling against the authority of the captain or commander of such vessel, or by fraud or violence taking possession of such vessel.

Paragraph 12 of said Article II. is amended to read as follows:

12. The embezzlement or criminal malversation of public funds

committed within the jurisdiction of one or the other party, by public officers or depositaries.

Paragraph 13 of said Article II. is likewise modified to read as follows : —

13. Embezzlement by any person or persons hired, salaried or employed, to the detriment of their employers or principals, when the crime or offence is punishable by imprisonment or other corporal punishment by the laws of both countries.

Paragraph 14 of said Article II. is likewise modified to read as follows : —

14. Kidnapping of minors or adults, defined to be the abduction or detention of a person or persons, in order to exact money from them or from their families, or for any other unlawful end.

ARTICLE II. In continuation of and as forming part of Article II. of the aforesaid Convention of January 5, 1877, shall be added the following paragraphs : —

15. Obtaining by threats of injury, or false devices, money, valuables or other personal property, and the purchase of the same with the knowledge that they have been so obtained, when the crimes or offences are punishable by imprisonment or other corporal punishment by the laws of both countries.

16. Larceny, defined to be the theft of effects, personal property, or money, of the value of twenty-five dollars or more.

17. Slave-trade, according to the laws of each of the two countries respectively.

18. Complicity in any of the crimes or offences enumerated in the Convention of January 5, 1877, as well as in these additional articles, provided that the persons charged with such complicity be subject as accessories to imprisonment or other corporal punishment by the laws of both countries.

ARTICLE III. After Article XI. of the aforesaid Convention of January 5, 1877, shall be inserted the two following articles :

*Article XII.* If, when a person accused shall have been arrested in virtue of the mandate or preliminary warrants of arrest, issued by the competent authority as provided in Article XI. hereof, and been brought before a judge or magistrate to the end of the evidence of his or her guilt being heard and examined as hereinbefore provided, it shall appear that the mandate or preliminary warrant of arrest has been issued in pursuance of a request or declaration received by telegraph from the govern-

ment asking for the extradition, it shall be competent for the judge or magistrate at his discretion to hold the accused for a period not exceeding twenty-five days, so that the demanding government may have opportunity to lay before such judge or magistrate legal evidence of the guilt of the accused; and if, at the expiration of said period of twenty-five days, such legal evidence shall not have been produced before such judge or magistrate, the person arrested shall be released; provided that the examination of the charges preferred against such accused person shall not be actually going on.

*Article XIII.* In every case of a request made by either of the two contracting parties for the arrest, detention or extradition of fugitive criminals in pursuance of the Convention of January 5, 1877, and of these additional articles, the legal officers or fiscal ministry of the country where the proceedings of extradition are had, shall assist the officers of the government demanding the extradition, before the respective judges and magistrates, by every legal means within their or its power; and no claim whatever for compensation for any of the services so rendered shall be made against the government demanding the extradition; provided however that any officer or officers of the surrendering government, so giving assistance, who shall, in the usual course of their duty, receive no salary or compensation other than specific fees for services performed, shall be entitled to receive from the government demanding the extradition the customary fees for the acts or services performed by them, in the same manner and to the same amount as though such acts or services had been performed in ordinary criminal proceedings under the laws of the country of which they are officers.

ARTICLE IV. All the provisions of the aforesaid Convention of the 5th of January, 1877, not abrogated by these additional articles, shall apply to these articles with the same force as to the said original Convention.

This additional Convention shall be ratified and the ratifications exchanged at Washington as soon as may be practicable; and upon the exchange of ratifications it shall have immediate effect, and form a part of the aforesaid Convention of January 5, 1877, and continue and be terminable in like manner therewith.

In testimony whereof the respective Plenipotentiaries have signed

the present additional Convention in duplicate, in the English and Spanish languages, and have hereunto affixed their seals.

Done at the city of Washington this 7th day of August in the year of our Lord one thousand eight hundred and eighty-two.

[SEAL.]

FREDK. T. FRELINGHUYSEN.

[SEAL.]

FRANCO BARCA.

### SWEDEN AND NORWAY.

*Concluded March 21, 1860 ; Ratifications exchanged at Washington, December 20, 1860 ; Proclaimed December 21, 1860.*

Whereas, it is found expedient, for the better administration of justice and the prevention of crime within the territories and jurisdiction of the parties respectively, that persons committing certain crimes, being fugitives from justice, should, under certain circumstances, be reciprocally delivered up ; and also to enumerate such crimes explicitly : The United States of America on the one part, and His Majesty the King of Sweden and Norway on the other part, having resolved to treat on this subject, have for that purpose appointed their respective Plenipotentiaries to negotiate and conclude a convention, that is to say : —

The President of the United States of America, Lewis Cass, Secretary of State of the United States, and His Majesty the King of Sweden and Norway, Baron Nicholas William de Wetterstedt, Knight of the Orders of the Polar Star and of St. Olaff, Commander of the Order of Dannebrog of Denmark, his said Majesty's Minister Resident near the Government of the United States ;

Who, after reciprocal communication of their respective powers, have agreed to and signed the following articles : —

ARTICLE I. It is agreed that the high contracting parties shall, upon mutual requisitions by them, their Diplomatic or Consular Agents, respectively made, deliver up to justice all persons who, being charged with or condemned for any of the crimes enumerated in the following article, committed within the jurisdiction of either party, shall seek an asylum or shall be found within the territories of the other : Provided, that this surrender and delivery shall not be obligatory on either of the high contracting parties except upon presentation by the other, in original or in verified copy, of the

judicial declaration or sentence establishing the culpability of the fugitive, and issued by the proper authority of the Government who claims the surrender, in case such sentence or declaration shall have been pronounced; said document to be drawn up and certified according to the forms prescribed by the laws of the country making the demand. But if such sentence or declaration shall not have been pronounced, then the surrender may be demanded, and shall be made, when the demanding party shall have furnished such proof of culpability as would have been sufficient to justify the apprehension and commitment for trial of the accused if the offence had been committed in the country where he shall have taken refuge.

ARTICLE II. Persons shall be so delivered up who shall have been charged with or sentenced for any of the following crimes, to wit: Murder (including assassination, parricide, infanticide, and poisoning), or attempt to commit murder; rape; piracy (including mutiny on board a ship, whenever the crew or part thereof, by fraud or violence against the commander, have taken possession of the vessel); arson; robbery and burglary; forgery, and the fabrication or circulation of counterfeit money, whether coin or paper money; embezzlement by public officers, including appropriation of public funds.

ARTICLE III. The expenses of any detention and delivery, effected in virtue of the preceding provisions, shall be borne and defrayed by the party who makes the requisition and receives the fugitive.

ARTICLE IV. Neither of the contracting parties shall be bound to deliver up, under the stipulations of this convention, any person who, according to the laws of the country where he shall be found, is a citizen or a subject of the same at the time his surrender is demanded.

ARTICLE V. The provisions of the present convention shall not be applied to any crime or offence of a political character.

ARTICLE VI. Whenever any person, accused of any of the crimes enumerated in this convention, shall have committed a new crime in the territories of the State where he has sought an asylum or shall be found, such person shall not be delivered up under the stipulations of this convention until he shall have been tried, and shall have received the punishment due to such new crime, or shall have been acquitted thereof.

ARTICLE VII. This convention shall not take effect until ten

days after its publication, made according to the laws of the respective Governments.

It shall remain in force until the end of six months after either of the high contracting parties shall have given notice to the other of its intention to terminate the same.

It shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof, and by His Majesty the King of Sweden and Norway, and the ratifications shall be exchanged within ten months from the date of its signature, or earlier if possible.

In faith whereof, the respective Plenipotentiaries have signed this convention, and have hereunto affixed their seals.

Done in duplicate, at Washington, the twenty-first day of March one thousand eight hundred and sixty, and the eighty-fourth year of the Independence of the United States.

[SEAL.]

LEW. CASS.

[SEAL.]

N. W. DE WETTERSTEDT.

### SWITZERLAND.

*Concluded November 25, 1850; Ratifications exchanged at Washington, November 8, 1855; Proclaimed November 9, 1855.*

ARTICLE XIII. The United States of America and the Swiss Confederation, on requisitions made in their name through the medium of their respective Diplomatic or Consular Agents, shall deliver up to justice persons who, being charged with the crimes enumerated in the following article, committed within the jurisdiction of the requiring party, shall seek asylum or shall be found within the territories of the other: *Provided*, That this shall be done only when the fact of the commission of the crime shall be so established as to justify their apprehension and commitment for trial if the crime had been committed in the country where the persons so accused shall be found.

ARTICLE XIV. Persons shall be delivered up, according to the provisions of this convention, who shall be charged with any of the following crimes, to wit:—

Murder (including assassination, parricide, infanticide, and poisoning); attempt to commit murder; rape; forgery, or the emission of forged papers; arson; robbery with violence, intimidation, or

forcible entry of an inhabited house ; piracy ; embezzlement by public officers, or by persons hired or salaried to the detriment of their employers, when these crimes are subject to infamous punishment.

ARTICLE XV. On the part of the United States, the surrender shall be made only by the authority of the Executive thereof ; and on the part of the Swiss Confederation, by that of the Federal Council.

ARTICLE XVI. The expenses of detention and delivery, effected in virtue of the preceding articles, shall be at the cost of the party making the demand.

ARTICLE XVII. The provisions of the foregoing articles relating to the surrender of fugitive criminals shall not apply to offences committed before the date hereof, nor to those of a political character.

## TWO SICILIES.<sup>1</sup>

*Concluded October 1, 1855; Ratifications exchanged at Naples, November 7, 1856; Proclaimed December 10, 1856.*

ARTICLE XXI. It is agreed that every person who, being charged with or condemned for any of the crimes enumerated in the following article, committed within the States of one of the high contracting parties, shall seek asylum in the States, or on board the vessels of war of the other party, shall be arrested and consigned to justice on demand made, through the proper diplomatic channel, by the Government within whose territory the offence shall have been committed.

This surrender and delivery shall not, however, be obligatory on either of the high contracting parties until the other shall have presented a copy of the judicial declaration or sentence establishing the culpability of the fugitive, in case such sentence or declaration shall have been pronounced. But if such sentence or declaration shall not have been pronounced, then the surrender may be demanded, and shall be made, when the demanding Government shall have furnished such proof as would have been sufficient to justify the apprehension, and commitment for trial, of the accused, if the offence had been committed in the country where he shall have taken refuge.

<sup>1</sup> Obsolete ; place taken by treaty with Italy.

**ARTICLE XXII.** Persons shall be delivered up, according to the provisions of this treaty, who shall be charged with any of the following crimes, to wit:—

Murder (including assassination, parricide, infanticide, and poisoning); attempt to commit murder; rape; piracy; arson; the making and uttering of false money, forgery, including forgery of evidences of public debt, bank-bills, and bills of exchange; robbery with violence, intimidation or forcible entry of an inhabited house; embezzlement by public officers, including appropriation of public funds; when these crimes are subject, by the code of the Kingdom of the Two Sicilies to the punishment *della reclusione*, or other severer punishment, and by the laws of the United States to infamous punishment.

**ARTICLE XXIII.** On the part of each country, the surrender of fugitives from justice shall be made only by the authority of the Executive thereof. And all expenses whatever of detention and delivery, effected in virtue of the preceding articles, shall be at the cost of the party making the demand.

**ARTICLE XXIV.** The citizens and subjects of each of the high contracting parties shall remain exempt from the stipulations of the preceding articles, so far as they relate to the surrender of fugitive criminals; nor shall they apply to offences committed before the date of the present treaty, nor to offences of a political character, unless the political offender shall also have been guilty of some one of the crimes enumerated in Article XXII.

#### VENEZUELA.<sup>1</sup>

*Concluded August 27, 1860; Ratifications exchanged at Caracas, August 9, 1861; Proclaimed September 25, 1861.*

**ARTICLE XXVII.** The United States of America and the Republic of Venezuela, on requisitions made in their name through the medium of their respective Diplomatic and Consular Agents, shall deliver up to justice persons who, being charged with the crimes enumerated in the following article, committed within the jurisdiction of the requiring party, shall seek asylum or shall be found within the territories of the other: Provided, That this shall be done only when the fact of the commission of the crime shall

<sup>1</sup> Terminated October 22, 1870.



be so established as to justify their apprehension and commitment for trial, if the crime had been committed in the country where the persons so accused shall be found ; in all of which the tribunals of said country shall proceed and decide according to their own laws.

ARTICLE XXVIII. Persons shall be delivered up, according to the provisions of this convention, who shall be charged with any of the following crimes, to wit: murder (including assassination, parricide, infanticide, and poisoning); attempt to commit murder; rape; forgery; the counterfeiting of money; arson; robbery with violence, intimidation, or forcible entry of an inhabited house; piracy; embezzlement by public officers, or by persons hired or salaried, to the detriment of their employers, when these crimes are subject to infamous punishment.

ARTICLE XXIX. On the part of each country the surrender shall be made only by the authority of the executive thereof. The expenses of detention and delivery, effected in virtue of the preceding articles, shall be at the cost of the party making the demand.

ARTICLE XXX. The provisions of the foregoing articles relating to the surrender of fugitive criminals shall not apply to offences committed before the date hereof, nor to those of a political character.

### WÜRTTEMBERG.

DECLARATION OF ACCESSION TO THE CONVENTION FOR THE EXTRADITION OF CRIMINALS, FUGITIVE FROM JUSTICE, OF JUNE 16, 1852, BETWEEN THE UNITED STATES AND PRUSSIA AND OTHER STATES OF THE GERMANIC CONFEDERATION.

*Dated October 13, 1853; Proclaimed December 27, 1853.*

[Translation.]

Inasmuch as a convention for the reciprocal extradition of fugitive criminals in certain cases, was concluded between Prussia and other States of the Germanic Confederation on the one hand, and the United States of North America on the other, under date of June 16, 1852, at Washington, by the Plenipotentiaries of the contracting parties, and was ratified by the contracting Governments; and whereas, in the second article thereof, the United States of North America declare that they agree that the stipulations of the aforesaid convention shall be applied to any other

State of the Germanic Confederation that shall subsequently declare its accession to the convention; now therefore, in pursuance thereof, the Government of His Majesty the King of Württemberg declares its accession to the aforesaid convention of June 16th, 1852, the text of which is word for word, as follows: [The original declaration here includes a copy, in German and English, of the convention of June 16, 1852] and hereby gives the express assurance that each and every article and provision of this convention shall be faithfully observed and executed within the territory of the Kingdom of Württemberg.

In testimony whereof, the Royal Minister of Foreign Affairs of Württemberg has, in the name of His Majesty the King of Württemberg, executed this certificate of accession, and caused the Royal Official Seal to be thereunto affixed.

Done at Stuttgart, October the 13th, 1853.

[SEAL.]

VON NEURATH,

*Royal Minister of Foreign Affairs at Württemberg.*

#### CONVENTION RELATIVE TO NATURALIZATION AND FOR EXTRA-DITION OF CRIMINALS.

*Concluded July 27, 1868; Ratifications exchanged at Stuttgart, August 17, 1869; Exchange of ratifications consented to by Senate, March 2, 1870; Proclaimed March 7, 1870.*

ARTICLE III. The convention for the mutual delivery of criminals, fugitives from justice, in certain cases, concluded between Württemberg and the United States the <sup>16 June, 1852.</sup><sub>13 October, 1853</sub> remains in force without change.

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## PART II.

### STATUTES TO EXECUTE TREATIES.

*Act of 1848.*

CHAPTER CLXVII.—An Act for giving effect to certain treaty stipulations between this and foreign governments, for the apprehension and delivering up of certain offenders.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in all*

cases in which there now exists, or hereafter may exist, any treaty or convention for extradition between the Government of the United States and any foreign government, it shall and may be lawful for any of the justices of the Supreme Court or judges of the several district courts of the United States — and the judges of the several State courts, and the commissioners authorized so to do by any of the courts of the United States, are hereby severally vested with power, jurisdiction, and authority, upon complaint made under oath or affirmation, charging any person found within the limits of any State, District, or Territory, with having committed within the jurisdiction of any such foreign government any of the crimes enumerated or provided for by any such treaty or convention — to issue his warrant for the apprehension of the person so charged, that he may be brought before such judge or commissioner, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient by him to sustain the charge under the provisions of the proper treaty or convention, it shall be his duty to certify the same, together with a copy of all the testimony taken before him, to the Secretary of State, that a warrant may issue upon the requisition of the proper authorities of such foreign government, for the surrender of such person, according to the stipulations of said treaty or convention; and it shall be the duty of the said judge or commissioner to issue his warrant for the commitment of the person so charged to the proper gaol, there to remain until such surrender shall be made.

SECT. 2. *And be it further enacted*, That in every case of complaint as aforesaid, and of a hearing upon the return of the warrant of arrest, copies of the depositions upon which an original warrant in any such foreign country may have been granted, certified under the hand of the person or persons issuing such warrant, and attested upon the oath of the party producing them to be true copies of the original depositions, may be received in evidence of the criminality of the person so apprehended.

SECT. 3. *And be it further enacted*, That it shall be lawful for the Secretary of State, under his hand and seal of office, to order the person so committed to be delivered to such person or persons as shall be authorized, in the name and on behalf of such foreign government, to be tried for the crime of which such person shall be so accused, and such person shall be delivered up accordingly;

and it shall be lawful for the person or persons authorized, as aforesaid, to hold such person in custody, and to take him or her to the territories of such foreign government, pursuant to such treaty, and if the person so accused shall escape out of any custody to which he or she shall be committed, or to which he or she shall be delivered, as aforesaid, it shall be lawful to retake such person in the same manner as any person accused of any crime against the laws in force in that part of the United States to which he or she shall so escape may be retaken, on an escape.

SECT. 4. *And be it further enacted*, That when any person who shall have been committed under this act, or any such treaty, as aforesaid, to remain until delivered up in pursuance of a requisition, as aforesaid, shall not be delivered up pursuant thereto, and conveyed out of the United States within two calendar months after such commitment, over and above the time actually required to convey the prisoner from the gaol to which he or she may have been committed, by the readiest way, out of the United States, it shall, in every such case, be lawful for any judge of the United States, or of any State, upon application made to him by or on behalf of the person so committed, and upon proof made to him that reasonable notice of the intention to make such application has been given to the Secretary of State, to order the person so committed to be discharged out of custody, unless sufficient cause shall be shown to such judge why such discharge ought not to be ordered.

SECT. 5. *And be it further enacted*, That this act shall continue in force during the existence of any treaty of extradition with any foreign government, and no longer.

SECT. 6. *And be it further enacted*, That it shall be lawful for the courts of the United States, or any of them, to authorize any person or persons to act as a commissioner or commissioners under the provisions of this act; and the doings of such person or persons so authorized, in pursuance of any of the provisions aforesaid, shall be good and available to all intents and purposes whatever. (9 Stats. at Large, 302.)

Approved August 12, 1848.

*Act of 1860.*

CHAPTER CLXXXIV. — An Act to amend an act entitled “ An act for giving effect to certain treaty stipulations between this and foreign governments for the apprehension and delivery up of certain offenders.”

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That in all cases where any depositions, warrants, or other papers, or copies thereof, shall be offered in evidence upon the hearing of an extradition case under the second section of the act entitled “ An act for giving effect to certain treaty stipulations between this and foreign governments for the apprehension and delivery up of certain offenders,” approved August twelfth, eighteen hundred and forty-eight, such depositions, warrants, and other papers, or copies thereof, shall be admitted and received for the purposes mentioned in the said section, if they shall be properly and legally authenticated, so as to entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party shall have escaped, and the certificate of the principal diplomatic or consular officer of the United States resident in such foreign country shall be proof that any paper or other document so offered is authenticated in the manner required by this act. (12 Stats. at Large, 84.)

Approved June 22, 1860.

*Act of 1869.*

CHAPTER CXLI. — An Act further to provide for giving effect to treaty stipulations between this and foreign governments for the extradition of criminals.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That whenever any person who shall have been delivered by any foreign government to an agent or agents of the United States for the purpose of being brought within the United States and tried for any crime of which he is duly accused, the President shall have power to take all necessary measures for the transportation and safe-keeping of such accused person, and for his security against lawless violence, until the final conclusion of his trial for the crime(s) or offences specified in the warrant of extradition, and

until his final discharge from custody or imprisonment for or on account of such crimes or offences, and for a reasonable time thereafter. And it shall be lawful for the President, or such person as he may empower for that purpose, to employ such portion of the land or naval forces of the United States, or of the militia thereof, as may be necessary for the safe-keeping and protection of the accused as aforesaid.

SECT. 2. *And be it further enacted*, That any person duly appointed as agent to receive in behalf of the United States the delivery by a foreign government of any person accused of crime committed within the jurisdiction of the United States and to convey him to the place of his trial, shall be, and hereby is, vested with all the powers of a marshal of the United States in the several districts through which it may be necessary for him to pass with such prisoner, so far as such power is requisite for his safe-keeping.

SECT. 3. *And be it further enacted*, That if any person or persons shall knowingly and wilfully obstruct, resist, or oppose such agent in the execution of his duties, or shall rescue or attempt to rescue such prisoner, whether in the custody of the agent aforesaid, or of any marshal, sheriff, jailer, or other officer or person to whom his custody may have lawfully been committed, every person so knowingly and wilfully offending in the premises shall, on conviction thereof before the district or circuit court of the United States for the district in which the offence was committed, be fined not exceeding one thousand dollars, and imprisoned not exceeding one year. (15 Stats. at Large, 337.)

Approved March 3, 1869.

[Section 5271 of the Revised Statutes of 1874 will be found below, in italics, in the same section of the Revised Statutes of 1878.]

*Act of 1876.*

CHAPTER CXXXIII.—An Act to amend in section fifty-two hundred and seventy-one of the Revised Statutes of the United States, relating to extradition.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That section fifty-two hundred and seventy-one of the Revised Statutes be amended so as to read as follows: "In every case of complaint and of a hearing upon the return of the warrant of arrest, any de-

positions, warrants, or other papers offered in evidence, shall be admitted and received for the purpose of such hearing if they shall be properly and legally authenticated so as to entitle them to be received as evidence of the criminality of the person so apprehended, by the tribunals of the foreign country from which the accused party shall have escaped, and copies of any such depositions, warrants, or other papers, shall, if authenticated according to the law of such foreign country, be in like manner received as evidence ; and the certificate of the principal diplomatic or consular officer of the United States resident in such foreign country shall be proof that any such deposition, warrant, or other paper, or copy thereof, is authenticated in the manner required by this section." (19 Stats. at Large, 59.)

Approved June 19, 1876.

*Revised Statutes, 1878.*

SECTION 5270. Whenever there is a treaty or convention for extradition between the Government of the United States and any foreign government, any justice of the Supreme Court, circuit judge, district judge, commissioner, authorized so to do by any of the courts of the United States, or judge of a court of record of general jurisdiction of any State, may, upon complaint made under oath, charging any person found within the limits of any State, district, or Territory, with having committed within the jurisdiction of any such foreign government any of the crimes provided for by such treaty or convention, issue his warrant for the apprehension of the person so charged, that he may be brought before such justice, judge, or commissioner, to the end that the evidence of criminality may be heard and considered. If, on such hearing, he deems the evidence sufficient to sustain the charge under the provisions of the proper treaty or convention, he shall certify the same, together with a copy of all the testimony taken before him, to the Secretary of State, that a warrant may issue upon the requisition of the proper authorities of such foreign government, for the surrender of such person, according to the stipulations of the treaty or convention ; and he shall issue his warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender shall be made.

SECT. 5271. (*In every case of complaint, and of a hearing upon the return of the warrant of arrest, copies of the depositions upon which an original warrant in any foreign country may have been granted, certified*



*under the hand of the person issuing such warrant, and attested upon the oath of the party producing them to be true copies of the original depositions, may be received in evidence of the criminality of the person so apprehended, if they are authenticated in such manner as would entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party escaped. The certificate of the principal diplomatic or consular officer of the United States resident in such foreign country shall be proof that any paper or other document so offered is authenticated in the manner required by this section.)* (In every case of complaint and of a hearing upon the return of the warrant of arrest, any depositions, warrants, or other papers offered in evidence, shall be admitted and received for the purpose of such hearing if they shall be properly and legally authenticated so as to entitle them to be received as evidence of the criminality of the person so apprehended, by the tribunals of the foreign country from which the accused party shall have escaped, and copies of any such depositions, warrants, or other papers, shall, if authenticated according to the law of such foreign country, be in like manner received as evidence; and the certificate of the principal diplomatic or consular officer of the United States resident in such foreign country shall be proof that any such deposition, warrant or other paper, or copy thereof, is authenticated in the manner required by this section.)

SECT. 5272. It shall be lawful for the Secretary of State, under his hand and seal of office, to order the person so committed to be delivered to such person as shall be authorized, in the name and on behalf of such foreign government, to be tried for the crime of which such person shall be so accused, and such person shall be delivered up accordingly; and it shall be lawful for the person so authorized to hold such person in custody, and to take him to the territory of such foreign government, pursuant to such treaty. If the person so accused shall escape out of any custody to which he shall be committed, or to which he shall be delivered, it shall be lawful to retake such person in the same manner as any person accused of any crime against the laws in force in that part of the United States to which he shall so escape, may be retaken on an escape.

SECT. 5273. Whenever any person who is committed under this Title or any treaty, to remain until delivered up in pursuance of a requisition, is not so delivered up and conveyed out of the United States within two calendar months after such commitment, over and above the time actually required to convey the prisoner from



the jail to which he was committed, by the readiest way, out of the United States, it shall be lawful for any judge of the United States, or of any State, upon application made to him by or on behalf of the person so committed, and upon proof made to him that reasonable notice of the intention to make such application has been given to the Secretary of State, to order the person so committed to be discharged out of custody, unless sufficient cause is shown to such judge why such discharge ought not to be ordered.

SECT. 5274. The provisions of this Title relating to the surrender of persons who have committed crimes in foreign countries shall continue in force during the existence of any treaty of extradition with any foreign government, and no longer.

SECT. 5275. Whenever any person is delivered by any foreign government to an agent of the United States, for the purpose of being brought within the United States and tried for any crime of which he is duly accused, the President shall have power to take all necessary measures for the transportation and safe-keeping of such accused person, and for his security against lawless violence, until the final conclusion of his trial for the crimes or offences specified in the warrant of extradition, and until his final discharge from custody or imprisonment for or on account of such crimes or offences, and for a reasonable time thereafter, and may employ such portion of the land or naval forces of the United States, or of the militia thereof, as may be necessary for the safe-keeping and protection of the accused.

SECT. 5276. Any person duly appointed as agent to receive, in behalf of the United States, the delivery, by a foreign government, of any person accused of crime committed within the jurisdiction of the United States, and to convey him to the place of his trial, shall have all the powers of a marshal of the United States, in the several districts through which it may be necessary for him to pass with such prisoner, so far as such power is requisite for the prisoner's safe-keeping.

SECT. 5277. Every person who knowingly and wilfully obstructs, resists, or opposes such agent in the execution of his duties, or who rescues or attempts to rescue such prisoner, whether in the custody of the agent or of any officer or person to whom his custody has lawfully been committed, shall be punishable by a fine of not more than one thousand dollars, and by imprisonment for not more than one year. (Revised Statutes of the United States.)

*Act of 1882.***CHAPTER CCCLXXVIII. — An act regulating fees and the practice in extradition cases.**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That all hearings in cases of extradition under treaty stipulation or convention shall be held on land, publicly, and in a room or office easily accessible to the public.

**SECT. 2.** That the following shall be the fees paid to commissioners in cases of extradition under treaty stipulation or convention between the Government of the United States and any foreign government, and no other fees or compensation shall be allowed to or received by them: —

For administering an oath, ten cents.

For taking an acknowledgment, twenty-five cents.

For taking and certifying depositions to file, twenty cents for each folio.

For each copy of the same furnished to a party on request, ten cents for each folio.

For issuing any warrant or writ, or for any other service, the same compensation as is allowed clerks for like services.

For issuing any warrant under the tenth article of the treaty of August ninth, eighteen hundred and forty-two, between the United States and the Queen of the United Kingdom of Great Britain and Ireland, against any person charged with any crime or offence as set forth in said article, two dollars.

For issuing any warrant under the provision of the convention for the surrender of criminals, between the United States and the King of the French, concluded at Washington November ninth, eighteen hundred and forty-three, two dollars.

For hearing and deciding upon the case of any person charged with any crime or offence, and arrested under the provisions of any treaty or convention, five dollars a day for the time necessarily employed.

**SECT. 3.** That on the hearing of any case under a claim of extradition by any foreign government, upon affidavit being filed by the person charged setting forth that there are witnesses whose evidence is material to his defence, that he cannot safely go to trial without them, what he expects to prove by each of them, and that

he is not possessed of sufficient means, and is actually unable to pay the fees of such witnesses, the judge or commissioner before whom such claim for extradition is heard may order that such witnesses be subpoenaed; and in such cases the costs incurred by the process, and the fees of witnesses, shall be paid in the same manner that similar fees are paid in the case of witnesses subpoenaed in behalf of the United States.

SECT. 4. That all witness fees and costs of every nature in cases of extradition, including the fees of the commissioner, shall be certified by the judge or commissioner before whom the hearing shall take place to the Secretary of State of the United States, who is hereby authorized to allow the payment thereof out of the appropriation to defray the expenses of the judiciary; and the Secretary of State shall cause the amount of said fees and costs so allowed to be reimbursed to the Government of the United States by the foreign government by whom the proceedings for extradition may have been instituted.

SECT. 5. That in all cases where any depositions, warrants, or other papers or copies thereof shall be offered in evidence upon the hearing of any extradition case under Title sixty-six of the Revised Statutes of the United States, such depositions, warrants, and other papers, or the copies thereof, shall be received and admitted as evidence on such hearing for all the purposes of such hearing if they shall be properly and legally authenticated so as to entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party shall have escaped, and the certificate of the principal diplomatic or consular officer of the United States resident in such foreign country shall be proof that any deposition, warrant, or other paper or copies thereof, so offered, are authenticated in the manner required by this act.

SECT. 6. The act approved June nineteenth, eighteen hundred and seventy-six, entitled "An act to amend section fifty-two hundred and seventy-one of the Revised Statutes of the United States," and so much of said section fifty-two hundred and seventy-one of the Revised Statutes of the United States as is inconsistent with the provisions of this act are hereby repealed. (Vol. 22, Stats. at Large, p. 215.)

Approved August 3, 1882.

**PART III.****TREATIES RELATING TO DESERTION OF SEAMEN.<sup>1</sup>**

THE following Treaties on the Desertion of Seamen are now in force : —

**AUSTRIA-HUNGARY.**

*Concluded July 11, 1870.*

**ARTICLE XII.** Consuls-General, Consuls, Vice-Consuls, or Consular Agents shall have the power to cause the arrest of all sailors or all other persons belonging to the crews of vessels of their nation who may be guilty of having deserted on the respective territories of the high contracting Powers, and to have them sent on board or back to their native country. To that end they shall make a written application to the competent local authority, supporting it by the exhibition of the ship's register and list of the crew, or else, should the vessel have sailed previously, by producing an authenticated copy of these documents, showing that the persons claimed really do belong to the ship's crew. Upon such request the surrender of the deserter shall not be refused. Every aid and assistance shall, moreover, be granted to the said consular authorities for the detection and arrest of deserters, and the latter shall be taken to the prisons of the country and there detained at the request and expense of the consular authority until there may be an opportunity for sending them away. The duration of this imprisonment shall not exceed the term of three months, at the expiration of which time, and upon three days' notice to the consul, the prisoner shall be set free, and he shall not be liable to rearrest for the same cause. Should, however, the deserter have committed on

<sup>1</sup> Jurisdiction is conferred upon consuls in respect to the internal order and disputes between masters and crews of vessels in port or on the high seas in the following treaties: Austria-Hungary, 1870; Belgium, 1880; Colombia, 1850; Denmark, 1861; Dominican Republic, 1867; France, 1853; German Empire, 1871; Greece, 1837; Italy, 1878; Netherlands, 1878; Portugal, 1840; Roumania, 1881; Russia, 1832; Salvador, 1870; Sweden and Norway, 1827.

shore an indictable offence, the local authorities shall be free to postpone his extradition until due sentence shall have been passed and executed. The high contracting parties agree that seamen, or other individuals forming part of the ship's crew, who are citizens of the country in which the desertion took place, shall not be affected by the provisions of this article.

## BELGIUM.

*Concluded March 9, 1880.*

**ARTICLE XII.** The respective Consuls-General, Consuls, Vice-Consuls and Consular Agents may cause to be arrested the officers, sailors, and all other persons making part of the crews, in any manner whatever, of ships of war or merchant vessels of their nation, who may be guilty, or be accused, of having deserted said ships and vessels, for the purpose of sending them on board or back to their country. To this end they shall address the competent local authorities of the respective countries, in writing, and shall make to them a written request for the deserters, supporting it by the exhibition of the register of the vessel and list of the crew, or by other official documents, to show that the persons claimed belong to the said ship's company.

Upon such request alone thus supported, the delivery to them of the deserters cannot be refused, unless it should be duly proved that they were citizens of the country where their extradition is demanded at the time of their being inscribed on the crew-list. All the necessary aid and protection shall be furnished for the pursuit, seizure and arrest of the deserters, who shall even be put and kept in the prisons of the country, at the request and expense of the consular officers until there may be an opportunity for sending them away. If, however, such an opportunity should not present itself within the space of three months, counting from the day of the arrest, the deserters shall be set at liberty, nor shall they be again arrested for the same cause.

If the deserter has committed any misdemeanor, and the court having the right to take cognizance of the offence shall claim and exercise it, the delivery of the deserter shall be deferred until the decision of the court has been pronounced and executed.

## BOLIVIA.

*Concluded May 13, 1858.*

**ARTICLE XXXIV.** The said Consuls shall have power to require the assistance of the authorities of the country for the arrest, detention and custody of deserters from the public and private vessels of their country; and for that purpose they shall address themselves to the courts, judges and officers competent, and shall demand the said deserters in writing, proving by an exhibition of the registers of the vessels or ships' roll, or other public documents, that those men were part of the said crews; and on this demand, so proved (saving, however, when the contrary is proved), the delivery shall not be refused. Such deserters, when arrested, shall be put at the disposal of said consuls, and may be put in the public prisons, at the request and expense of those who reclaim them, to be sent to the ships to which they belonged or to others of the same nation; but if they be not sent back within two months, to be counted from the day of their arrest, they shall be set at liberty, and shall be no more arrested for the same cause.

## COLOMBIA (NEW GRANADA).

*Concluded December 12, 1846.*

**ARTICLE XXXIII.** The said Consuls shall have power to require the assistance of the authorities of the country for the arrest, detention, and custody of deserters from the public and private vessels of their country; and for that purpose they shall address themselves to the courts, judges, and officers competent, and shall demand in writing the said deserters, proving, by an exhibition of the registers of the vessels or ship's roll or other public documents, that those men were part of the said crews; and on this demand so proved (saving, however, where the contrary is proved by other testimonies), the delivery shall not be refused. Such deserters, when arrested, shall be put at the disposal of the said Consuls, and may be put in the public prisons at the request and expense of those who reclaim them, to be sent to the ships to which they belonged or to others of the

same nation. But if they be not sent back within two months, to be counted from the day of their arrest, they shall be set at liberty, and shall be no more arrested for the same cause.

*Concluded May 4, 1850.*

ARTICLE III. . . . 11. They may demand from the local authorities the arrest of seamen deserting from the vessels of the nation in whose service the Consul is employed, exhibiting, if necessary, the register of the vessel, her muster-roll, and any other official document in support of this demand. The said authorities shall take such measures as may be in their power for the discovery and arrest of such deserters, and shall place them at the disposition of the Consul; but if the vessel to which they belong shall have sailed, and no opportunity for sending them away should occur, they shall be kept in arrest, at the expense of the Consul, for two months; and if, at the expiration of that time, they should not have been sent away, they shall be set at liberty by the respective authorities, and cannot again be arrested for the same cause.

## DENMARK.

*Concluded July 11, 1861.*

ARTICLE II. The Consuls-General, Consuls, Vice-Consuls and Commercial Agents are authorized to require the assistance of the local authorities for the search, arrest, and imprisonment of the deserters from the ships of war and merchant vessels of their country. For this purpose they shall apply to the competent tribunals, judges and officers, and shall in writing demand said deserters, proving by the exhibition of the registers of the vessels, the rolls of the crews, or by other official documents, or, if the vessel shall have departed, by copy of said documents duly certified by them, that such individuals form part of the crew; and on this reclamation being thus substantiated, the surrender shall not be refused, unless there be sufficient proof of the said persons being citizens or subjects of the country where their surrender is demanded. Such deserters, when arrested, shall be placed at the disposal of said Consuls-General, Consuls, Vice-Consuls or Commercial Agents, and may

be confined in the public prisons at the request and cost of those who shall claim them, in order to be detained until the time when they shall be restored to the vessels to which they belonged, or sent back to their own country by a vessel of the same nation, or any other vessel whatsoever. But if not sent back within three months from the day of their arrest, they shall be set at liberty, and shall not be again arrested for the same cause.

However, if the deserter should be found to have committed any crime or offence, his surrender may be delayed until the tribunal before which his case shall be depending shall have pronounced its sentence, and such sentence shall have been carried into effect.

### DOMINICAN REPUBLIC.

*Concluded February 8, 1867.*

ARTICLE XXVI. . . . The said Consuls and Vice-Consuls are authorized to require the assistance of the local authorities for the arrest and imprisonment of the deserters from the ships of war and merchant vessels of their country. For this purpose they shall apply to the competent tribunals, judges, and officers, and shall, in writing, demand such deserters, proving, by the exhibition of the registers of the vessels, the muster-rolls of the crews, or by any other official documents, that such individuals formed part of the crews; and on this claim being substantiated, the surrender shall not be refused. Such deserters, when arrested, shall be placed at the disposal of the Consuls and Vice-Consuls, and may be confined in the public prisons at the request and cost of those who shall claim them, in order to be sent to the vessels to which they belong, or to others of the same country. But if not sent back within three months of the day of their arrest, they shall be set at liberty, and shall not again be arrested for the same cause. However, if the deserter shall be found to have committed any crime or offence, his surrender may be delayed until the tribunal before which his case shall be pending shall have pronounced its sentence, and such sentence shall have been carried into effect.



## ECUADOR.

*Concluded June 13, 1889.*

**ARTICLE XXXII.** The said Consuls shall have power to require the assistance of the authorities of the country, for the arrest, detention, and custody of deserters from the public and private vessels of their country; and for that purpose they shall address themselves to the courts, judges, and officers competent, and shall demand the said deserters in writing; proving by an exhibition of the register of the vessel's or ship's roll, or other public documents, that those men were part of the said crews, and on this demand, so proved (saving, however, where the contrary is proved), the delivery shall not be refused. Such deserters, when arrested, shall be put at the disposal of said Consuls, and may be put in the public prisons at the request and expense of those who reclaim them, to be sent to the ships to which they belonged, or to others of the same nation. But if they be not sent back within two months, to be counted from the day of their arrest, they shall be set at liberty, and shall be no more arrested for the same cause.

## FRANCE.

*Concluded February, 23, 1853.*

**ARTICLE IX.** The respective Consuls-General, Consuls, Vice-Consuls, or Consular Agents may arrest the officers, sailors, and all other persons making part of the crews of ships of war, or merchant vessels of their nation, who may be guilty or be accused of having deserted said ships and vessels, for the purpose of sending them on board or back to their country. To that end the Consuls of France in the United States shall apply to the magistrates designated in the act of Congress of May 4, 1826, — that is to say, indiscriminately to any of the Federal, State, or municipal authorities; and the Consuls of the United States in France shall apply to any of the competent authorities and make a request in writing for the deserters, supporting it by an exhibition of the registers of the vessel and list of the crew, or by other official documents, to show that the men whom they claim belonged to said crew. Upon such request alone, thus supported, and without the exaction of any oath from the Consuls, the deserters, not being citizens of the

country where the demand is made, either at the time of their shipping or of their arrival in the port, shall be given up to them. All aid and protection shall be furnished them for the pursuit, seizure, and arrest of the deserters, who shall even be put and kept in the prisons of the country at the request and at the expense of the Consuls until these agents may find an opportunity of sending them away. If, however, such opportunity should not present itself within the space of three months, counting from the day of the arrest, the deserters shall be set at liberty, and shall not again be arrested for the same cause.

### GERMAN EMPIRE.

*Concluded December 11, 1871.*

ARTICLE XIV. Consuls-General, Consuls, Vice-Consuls, or Consular Agents may arrest the officers, sailors, and all other persons making part of the crews of ships of war or merchant vessels of their nation, who may be guilty or be accused of having deserted said ships and vessels, for the purpose of sending them on board or back to their country.

To that end, the Consuls of Germany in the United States shall apply to either the Federal, State, or municipal courts or authorities, and the Consuls of the United States in Germany shall apply to any of the competent authorities, and make a request in writing for the deserters, supporting it by an official extract of the register of the vessel and the list of the crew, or by other official documents, to show that the men whom they claim belong to said crew. Upon such request alone thus supported, and without the exaction of any oath from the Consuls, the deserters (not being citizens of the country where the demand is made either at the time of their shipping or of their arrival in the port) shall be given up to the Consuls. All aid and protection shall be furnished them for the pursuit, seizure, and arrest of the deserters, who shall be taken to the prisons of the country and there detained at the request and at the expense of the Consuls, until the said Consuls may find an opportunity of sending them away.

If, however, such opportunity should not present itself within the space of three months, counting from the day of the arrest, the deserters shall be set at liberty, and shall not again be arrested for the same cause.

## GREECE.

*Concluded December 10-22, 1837.*

**ARTICLE XIII.** The said Consuls, Vice-Consuls, or commercial agents are authorized to require the assistance of the local authorities for the arrest, detention, and imprisonment of the deserters from the ships of war and merchant vessels of their country; and for this purpose they shall apply to the competent tribunals, judges, and officers, and shall, in writing, demand said deserters, proving by the exhibition of the registers of the vessels, the rolls of the crews, or by other official documents, that such individuals formed part of the crews, and on this reclamation being thus substantiated the surrender shall not be refused. Such deserters, when arrested, shall be placed at the disposal of the said Consuls, Vice-Consuls, or commercial agents, and may be confined in the public prisons at the request and cost of those who claim them, in order to be sent to the vessels to which they belonged, or to others of the same country. But if not sent back within the space of two months, reckoning from the day of their arrest, they shall be set at liberty, and shall not be again arrested for the same cause.

It is understood, however, that if the deserter should be found to have committed any crime or offence, his surrender may be delayed until the tribunal before which the case shall be depending shall have pronounced its sentence, and such sentence shall have been carried into effect.

## HAWAIIAN ISLANDS.

*Concluded December 20, 1849.*

**ARTICLE X.** . . . The said Consuls, Vice-Consuls, and Commercial Agents are authorized to require the assistance of the local authorities for the search, arrest, detention, and imprisonment of the deserters from the ships of war and merchant vessels of their country. For this purpose they shall apply to the competent tribunals, judges, and officers, and shall, in writing, demand the said deserters, proving, by the exhibition of the registers of the vessels, the rolls of the crews, or by other official documents, that such individuals formed part of the crews; and this reclamation being thus substantiated, the surrender shall not be refused. Such deserters,

when arrested, shall be placed at the disposal of the said Consuls, Vice-Consuls, or Commercial Agents, and may be confined in the public prisons, at the request and cost of those who shall claim them, in order to be detained until the time when they shall be restored to the vessel to which they belonged, or sent back to their own country by a vessel of the same nation, or any other vessel whatsoever. The agents, owners, or masters of vessels on account of whom the deserters have been apprehended, upon requisition of the local authorities, shall be required to take or send away such deserters from the States and dominions of the contracting parties, or give such security for their good conduct as the law may require. But, if not sent back nor reclaimed within six months from the day of their arrest, or if all the expenses of such imprisonment are not defrayed by the party causing such arrest and imprisonment, they shall be set at liberty, and shall not be again arrested for the same cause. However, if the deserters should be found to have committed any crime or offence, their surrender may be delayed until the tribunal before which their case shall be depending shall have pronounced its sentence, and such sentence shall have been carried into effect.

### HAYTI.

*Concluded November 3, 1864.*

**ARTICLE XXXVI.** The said Consuls and Vice-Consuls shall have power to require the assistance of the authorities of the country for the arrest, detention, and custody of deserters from the ships of war and merchant vessels of their country. For this purpose they shall apply to the competent tribunals, judges, and officers, and shall, in writing, demand such deserters, proving, by the exhibition of the registers of the vessels, the muster-rolls of the crews, or by any other official documents, that such individuals formed a part of the crews; and on this claim being substantiated, the surrender shall not be refused. Such deserters, when arrested, shall be placed at the disposal of the Consuls and Vice-Consuls, and may be confined in the public prisons at the request and cost of those who shall claim them, in order to be sent to the vessels to which they belong, or to others of the same country. But if not sent back within three months, to be counted from the day of their arrest, they shall be set at liberty, and shall not again be arrested for the same cause.

## ITALY.

*Concluded May 8, 1878.*

**ARTICLE XIII.** The respective Consuls-General, Consuls, Vice-Consuls, and Consular Agents may arrest the officers, seamen, and any other person forming part of the crew of the merchant and war vessels of their nation, who have been guilty of or charged with deserting from said vessels, in order to return them to their vessels, or to send them back to their country.

To this effect the consular officers of Italy in the United States may apply in writing to either the courts or the Federal, State, or municipal authorities of the United States, and the consular officers of the United States may apply to any of the competent authorities in Italy, and make a demand for the deserters, showing, by exhibiting the register of the vessel and the crew-list, or other official documents, that the persons claimed really belonged to said crew. Upon such request, alone, thus supported, and without the exaction of any oath from the consular officers, the deserters, not being citizens or subjects of the country in which the demand is made, at the time of their shipment, shall be given up.

All assistance and necessary aid moreover, shall be furnished for the search and arrest of said deserters, who shall be placed in the prisons of the country, and kept there at the request and at the expense of the consular officer, until he finds an opportunity to send them home.

If, however, such an opportunity shall not present itself within the space of three months, counting from the day of the arrest, the deserter shall be set at liberty, nor shall he be again imprisoned for the same cause.

## MADAGASCAR.

*Concluded May 13, 1881.*

**ARTICLE VII. . . . 3.** In cases of mutiny on United States merchant vessels, or in cases of desertion from United States national or private vessels, the local authorities shall, on application, render all necessary assistance as far as is possible to the United States consular officer to bring back the deserter or to restore discipline on board merchant vessels.

4. When a United States consular officer shall ask the local authorities to arrest a deserter from a vessel, the police shall be directed to do their utmost to arrest promptly such deserter in the district. And if the consular officer suggest any other places where the deserter may have secreted himself, the authorities shall give a written notice to the governor of such district pointed out, who shall in his turn do his utmost to find and arrest the deserter. And the result of such efforts, whether successful or otherwise, shall be promptly reported to the governor, who shall report to the consular officer.

5. For the services required by this article for arresting deserters, if such deserter be arrested, a fee of three dollars (\$3) may be exacted for each deserter arrested, and five cents per English mile for the distance actually travelled by the police, and also such necessary expenses as may be incurred for food, ferrying, and imprisonment of the deserter.

6. And if discovered that such police did not do their utmost they shall be punished by the governor; and if such police have done their utmost but without success, they will be none the less entitled to the expenses above stated, but not to the fee of three dollars (\$3).

#### NETHERLANDS.

*Concluded May 23, 1878.*

ARTICLE XII. The Consuls-General, Vice-Consuls-General, Consuls, Vice-Consuls and Consular-Agents of the two countries may respectively cause to be arrested and sent on board, or cause to be returned to their own country, such officers, seamen, or other persons forming part of the crew of ships of war or merchant vessels of their nation, who may have deserted in one of the ports of the other.

To this end they shall respectively address the competent national or local authorities in writing and make request for the return of the deserter, and furnish evidence by exhibiting the register, crew-list, or other official documents of the vessel, or a copy or extract therefrom, duly certified, that the persons claimed belong to said ship's company. On such application being made, all assistance shall be furnished for the pursuit and arrest of such deserters, who shall even be detained and guarded in the jails of the country, pursuant to the requisition and at the expense of the

Consuls-General, Vice-Consuls-General, Consuls, Vice-Consuls or Consular-Agents until they find an opportunity to send the deserters home.

If, however, no such opportunity shall be had for the space of three months from the day of the arrest, the deserters shall be set at liberty, and shall not again be arrested for the same cause. It is understood that persons who are subjects or citizens of the country within which the demand is made, shall be exempted from these provisions.

If the deserter shall have committed any crime or offence in the country within which he is found, he shall not be placed at the disposal of the Consul until after the proper tribunal having jurisdiction in the case shall have pronounced sentence, and such sentence shall have been executed.

## PERU.

*Concluded August 31, 1887.*

ARTICLE XXXII. The Consuls and Vice-Consuls shall have power to require the assistance of the public authorities of the country in which they reside for the arrest, detention, and custody of deserters from the vessels of war or merchant vessels of their nation; and where the deserters claimed shall belong to a merchant vessel, the Consuls or Vice-Consuls must address themselves to the competent authority, and demand the deserters in writing, proving by the ship's roll or other public document that the individuals claimed are a part of the crew of the vessel from which it is alleged that they have deserted; but should the individuals claimed form a part of the crew of a vessel of war, the word of honor of a commissioned officer attached to the said vessel shall be sufficient to identify the deserters; and when the demand of the Consuls or Vice-Consuls shall, in either case, be so proved, the delivery of the deserters shall not be refused. The said deserters, when arrested, shall be delivered to the Consuls or Vice-consuls, or, at the request of these, shall be put in the public prisons, and maintained at the expense of those who reclaim them, to be delivered to the vessels to which they belong or sent to others of the same nation; but if the said deserters should not be so delivered or sent within the term of two months, to be counted from the day of their arrest, they shall be set at liberty, and shall not be again apprehended for the same cause. The high contracting parties

agree that it shall not be lawful for any public authority or other person within their respective dominions to harbor or protect such deserters.

## PORTUGAL.

*Concluded August 26, 1840.*

**ARTICLE XI.** The said Consuls, Vice-Consuls, and Commercial Agents are authorized to require the assistance of the local authorities for the search, arrest, detention, and imprisonment of the deserters from the ships of war and merchant vessels of their country.

For this purpose they shall apply to the competent tribunals, judges, and officers, and shall in writing demand the said deserters, proving, by the exhibition of the registers of the vessels, the rolls of the crews, or by any other official documents, that such individuals formed part of the crews; and this reclamation being thus substantiated, the surrender shall be made without delay.

Such deserters, when arrested, shall be placed at the disposal of the said Consuls, Vice-Consuls, or Commercial Agents, and may be confined in the public prisons, at the request and cost of those who shall claim them, in order to be detained until the time when they shall be restored to the vessels to which they belonged, or sent back to their own country by a vessel of the same nation, or any other vessel whatsoever. But, if not sent back within four months from the day of their arrest, they shall be set at liberty, and shall not be again arrested for the same cause. However, if the deserter shall be found to have committed any crime or offence, the surrender may be delayed until the tribunal before which his case shall be pending shall have pronounced its sentence, and such sentence shall have been carried into effect.

## ROUMANIA.

*Concluded June 17, 1881.*

**ARTICLE XII.** The respective Consuls-General, Consuls, Vice-Consuls and Consular Agents may cause to be arrested the officers, sailors, and all other persons making part of the crews, in any manner whatever, of ships of war, or merchant vessels of their nation, who may be guilty, or be accused, of having deserted said



ships and vessels, for the purpose of sending them on board or back to their country. To this end they shall address the competent local authorities of the respective countries, in writing, and shall make to them a written request for the deserters, supporting it by the exhibition of the register of the vessel and list of the crew, or by other official documents, to show that the persons claimed belong to the said ship's company.

Upon such request thus supported, the delivery to them of the deserters cannot be refused, unless it should be duly proved that they were citizens of the country where their extradition is demanded at the time of their being inscribed on the crew-list. All the necessary aid and protection shall be furnished for the pursuit, seizure, and arrest of the deserters, who shall even be put and kept in the prisons of the country, at the request and expense of the consular officers, until there may be an opportunity for sending them away. If, however, such an opportunity should not present itself within the space of three months, counting from the day of the arrest, the deserters shall be set at liberty, nor shall they again be arrested for the same cause.

If the deserter has committed any misdemeanor, and the court having the right to take cognizance of the offence shall claim and exercise it, the delivery of the deserter shall be deferred until the decision of the court has been pronounced and executed.

## RUSSIA.

*Concluded December 18, 1832.*

**ARTICLE IX.** The said Consuls, Vice-Consuls, and Commercial Agents are authorized to require the assistance of the local authorities for the search, arrest, detention, and imprisonment of the deserters from the ships of war and merchant vessels of their country. For this purpose they shall apply to the competent tribunals, judges, and officers, and shall in writing demand said deserters, proving, by the exhibition of the registers of the vessels, the rolls of the crews, or by other official documents, that such individuals formed part of the crews; and this reclamation being thus substantiated, the surrender shall not be refused.

Such deserters, when arrested, shall be placed at the disposal of the said Consuls, Vice-Consuls, or Commercial Agents, and may be confined in the public prisons, at the request and cost of those

who shall claim them, in order to be detained until the time when they shall be restored to the vessels to which they belong, or sent back to their own country by a vessel of the same nation, or any other vessel whatsoever. But if not sent back within four months from the day of their arrest, they shall be set at liberty, and shall not be again arrested for the same cause.

However, if the deserter should be found to have committed any crime or offence, his surrender may be delayed until the tribunal before which his case shall be depending shall have pronounced its sentence and such sentence shall have been carried into effect.

### SALVADOR.

*Concluded December 6, 1870.*

ARTICLE XXXIII. . . . 11. They [the Consuls] may demand from the local authorities the arrest of seamen deserting from the vessel of the nation in whose service the Consul is employed, exhibiting, if necessary, the register of the vessel, her muster-roll, and any other official document in support of this demand. The said authorities shall take such measures as may be in their power for the discovery and arrest of such deserters, and shall place them at the disposition of the Consul; but if the vessel to which they belong shall have sailed, and no opportunity for sending them away should occur, they shall be kept in arrest at the expense of the Consul for two months; and if at the expiration of that time they should not have been sent away, they shall be set at liberty by the respective authorities, and cannot again be arrested for the same cause.

### SPAIN.

*Concluded February 22, 1819.*

ARTICLE XIII. Both contracting parties, wishing to favor their mutual commerce by affording in their ports every necessary assistance to their respective merchant vessels, have agreed that the sailors who shall desert from their vessels in the ports of the other shall be arrested and delivered up at the instance of the Consul, who shall prove, nevertheless, that the deserters belonged to the vessels that claimed them, exhibiting the document that is customary in their nation: that is to say, the American Consul in a Spanish port shall exhibit the document known by the name of articles, and the Spanish Consul in American ports the roll of the vessel;

and if the name of the deserter or deserters who are claimed shall appear in the one or the other, they shall be arrested, held in custody, and delivered to the vessel to which they shall belong.

### SWEDEN AND NORWAY.

*Concluded July 4, 1827.*

**ARTICLE XIV.** The said Consuls, Vice-Consuls, or Commercial Agents are authorized to require the assistance of the local authorities for the arrest, detention, and imprisonment of the deserters from the ships of war and merchant vessels of their country ; and for this purpose they shall apply to the competent tribunals, judges, and officers, and shall in writing demand said deserters, proving, by the exhibition of the registers of the vessels, the rolls of the crews, or by other official documents, that such individuals formed part of the crews, and, on this reclamation being thus substantiated, the surrender shall not be refused.

Such deserters, when arrested, shall be placed at the disposal of the said Consuls, Vice-Consuls, or Commercial Agents, and may be confined in the public prisons, at the request and cost of those who claim them, in order to be sent to the vessels to which they belonged, or to others of the same country ; but if not sent back within the space of two months, reckoning from the day of their arrest, they shall be set at liberty, and shall not be again arrested for the same cause.

It is understood, however, that if the deserter should be found to have committed any crime or offence, his surrender may be delayed until the tribunal before which the case shall be depending shall have pronounced its sentence, and such sentence shall have been carried into effect.

### TONGA.

*Concluded October 2, 1886.*

**ARTICLE X.** Should any member of the ship's company desert from a vessel-of-war or merchant vessel of either of the High Contracting Parties while such vessel is within the territorial jurisdiction of the other, the local authorities shall render all lawful assistance for the apprehension of such deserter, on application to that effect made by the Consul of the High Contracting Party concerned, or if there be no Consul, then by the master of the vessel.



## APPENDIX II.

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### STATE LAWS, RULES, AND FORMS.

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#### *Inter-State Conference, 1887.*

IN January, 1887, Governor Hill of New York invited the Governors of the States which adjoin New York to unite with him in a call for a general meeting of representatives of all the States, to consider the adoption of a uniform system of rules and practice in inter-State rendition. The result was that in July, 1887, the Governors of New York, Massachusetts, Vermont, Connecticut, and Pennsylvania issued a joint letter to the Governors of all the States and Territories, and to the Chief-Justice of the Supreme Court of the District of Columbia, inviting them each to send a delegate to a conference to meet in New York city on August 23, 1887. The conference met at the appointed time, representatives being present for California, Connecticut, the District of Columbia, Georgia, Illinois, Maine, Massachusetts, Michigan, Minnesota, Nebraska, New Hampshire, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and Wisconsin. Governor Beaver of Pennsylvania was elected President of the conference. The committee on laws suggested whether it would not be proper to amend the act of 1793 (section 5278, Revised Statutes) so as to prescribe a limit as to the offences for which rendition could be demanded. This recommendation was rejected, on the ground that it would be in violation of the Constitution, which, as it had been construed by the courts, included offences of every grade. A recommendation that no demand be complied with where the fleeing was constructive was

rejected on the ground that the decisions of the courts already covered it. The conference sat on August 23, 24, and 25, and framed a bill to be recommended to Congress for adoption, and a set of rules to govern practice.

The rules follow closely those adopted by Governor Hill in 1885. They have been approved and are in force in Colorado; Maine; Michigan, with one or two unimportant deviations; New Hampshire; North Carolina; Virginia. They have been adopted with modifications and additions in other States. The following States and Territories have adopted no rules: Idaho, Kansas, Montana, New Jersey, New Mexico, Oregon, South Carolina, Texas, West Virginia, Wyoming.

### RULES OF PRACTICE

adopted August 24, 1887, by the delegates of the Governors of the States represented and the delegate of the Chief Justice of the Supreme Court of the District of Columbia, as follows:—

We the undersigned, delegates to an Inter-State Extradition Conference, appointed by the Governors of the several States and Territories, and assembled at New York city, this 24th day of August, 1887, hereby certify that after deliberation the following rules and forms have been adopted, and we recommend the use of the same in all cases of inter-State extradition: CHARLES H. PHELPS, California; ALEXANDER B. HAGNER, District of Columbia; TILTON E. DOOLITTLE, Connecticut; W. W. MONTGOMERY, Georgia; T. J. SIMMONS, Georgia; BOYKIN WRIGHT, Georgia; J. K. EDSALL, Illinois; ALMON A. STROUT, Maine; EDGAR J. SHERMAN, Massachusetts; MILO D. CAMPBELL, Michigan; MOSES E. CLAPP, Minnesota; WILLIAM LEESE, Nebraska; DANIEL BARNARD, New Hampshire; GOODWIN BROWN, New York; THEODORE F. DAVIDSON, North Carolina; CHARLES E. PRIOR, Ohio; W. S. KIRKPATRICK, Pennsylvania; C. W. STONE, Pennsylvania; EDWIN D. MCGUINNESS, Rhode Island; W. K. BACHMAN, South Carolina; JOHN W. STEWART, Vermont; HENRY W. FLOURNOY, Virginia; L. J. RUSK, Wisconsin.

#### *Rules.*

The application for the requisition must be made by the district or prosecuting attorney for the county or district in which the offence was committed, and must be in duplicate original papers or certified copies thereof.

The following must appear by the certificate of the district or prosecuting attorney: —

(a) The full name of the person for whom extradition is asked, together with the name of the agent proposed, to be properly spelled, in Roman capital letters; for example: JOHN DOE.

(b) That in his opinion the ends of public justice require that the alleged criminal be brought to this State for trial at the public expense.

(c) That he believes he has sufficient evidence to secure the conviction of the fugitive.

(d) That the person named as agent is a proper person, and that he has no private interest in the arrest of the fugitive.

(e) If there has been any former application for a requisition for the same person, growing out of the same transaction, it must be so stated, with an explanation of the reasons for a second request, together with the date of such application, as near as may be.

(f) If the fugitive is known to be under either civil or criminal arrest in the State or Territory to which he is alleged to have fled, the fact of such arrest and the nature of the proceedings on which it is based must be stated.

(g) That the application is not made for the purpose of enforcing the collection of a debt, or for any private purpose whatever, and that if the requisition applied for be granted, the criminal proceedings shall not be used for any of said objects.

(h) The nature of the crime charged, with a reference, when practicable, to the particular statute defining and punishing the same.

(i) If the offence charged is not of recent occurrence, a satisfactory reason must be given for the delay in making the application.

1. In all cases of fraud, false pretences, embezzlement, or forgery, when made a crime by the common law, or any penal code or statute, the affidavit of the principal complaining witness or informant that the application is made in good faith, for the sole purpose of punishing the accused, and that he does not desire or expect to use the prosecution for the purpose of collecting a debt, or for any private purpose, and will not directly or indirectly use the same for any of said purposes, shall be required, or a sufficient reason be given for the absence of such affidavit.

2. Proof by affidavit of *facts and circumstances* satisfying the

Executive that the alleged criminal has fled from the justice of the State on whose Executive the demand is requested to be made, must be given. The fact that the alleged criminal was in the State where the alleged crime was committed at the time of the commission thereof, and is found in the State upon which the requisition was made, shall be sufficient evidence, in the absence of other proof, that he is a fugitive from justice.

3. If an indictment has been found, certified copies, in duplicate, must accompany the application.

4. If an indictment has not been found by a grand jury, the *facts and circumstances* showing the commission of the crime charged, and that the accused perpetrated the same, must be shown by affidavits taken before a *magistrate* (a notary public is not a magistrate within the meaning of the statutes), and that a warrant has been issued, and duplicate certified copies of the same, together with the returns thereto, if any, must be furnished upon an application.

5. The official character of the officer taking the affidavits or depositions and of the officer who issued the warrant must be duly certified.

6. Upon the renewal of an application, for example, on the ground that the fugitive has fled to another State, not having been found in the State on which the first was granted, new or certified copies of papers in conformity with the above rules must be furnished.

7. In the case of any person who has been convicted of any crime, and escapes after conviction, or while serving his sentence, the application may be made by the jailer, sheriff, or other officer having him in custody, and shall be accompanied by certified copies of the indictment or information, record of conviction and sentence, upon which the person is held, with the affidavit of such person having him in custody, showing such escape, with the circumstances attending the same.

8. No requisition will be made for the extradition of any fugitive except in compliance with these rules.



## ALABAMA.

ABSCONDING FELONS AND FUGITIVES FROM JUSTICE. —  
REWARDS AND REQUISITIONS.

4747 (3977). **Fugitive from other State delivered up on demand of Executive.** — Any person charged in any State or Territory of the United States with treason, felony, or other crime, who shall flee from justice and be found in this State must, on the demand of the executive authority of the State or Territory from which he fled, be delivered up by the governor of this State, to be removed to the State or Territory having jurisdiction of such crime. *Morrell v. Quarles*, 35 Ala. 544; *Ex parte State*, 73 Ala. 503.

4748 (3978). **Warrant of Arrest issued by Magistrate.** — A warrant for the apprehension of such person may be issued by any magistrate who is authorized to issue a warrant of arrest.

4749 (3979). **Arrest and Commitment; Copy of Indictment or other Judicial Proceedings conclusive evidence.** — The proceedings for the arrest and commitment of the person charged are in all respects similar to those provided in this code for the arrest and commitment of a person charged with a public offence, except that an exemplified copy of an indictment found, or other judicial proceedings had against him in the State or Territory in which he is charged to have committed the offence, must be received as conclusive evidence before the magistrate.

4750 (3980). **Commitment to await Requisition of Governor; Bail.** — If, from the examination, it appears that the person charged has committed the crime alleged, the magistrate must, by warrant reciting the accusation, commit him to jail for a time specified in the warrant, which the magistrate deems reasonable, to enable the arrest of the fugitive to be made, under the warrant of the executive of this State, on the requisition of the executive authority of the State or Territory in which he committed the offence, unless he give bail as provided in the next section, or until he is legally discharged.

4751 (3981). **Bailed except in Capital Cases; Condition and Requisites of Bond.** — The magistrate must, unless the offence with which the fugitive is charged is shown to be an offence punished

capitally by the laws of the State in which it was committed, admit the person arrested to bail, by bond or undertaking, with sufficient sureties, and in such sum as he deems proper, for his appearance before him at a time specified in such bond or undertaking, and for his surrender, to be arrested upon the warrant of the Governor of this State.

4752 (3982). **When discharged on Bail.** — If such person is not arrested on the warrant of the governor before the expiration of the time specified in the warrant, bond, or undertaking, he must be discharged from custody on bail.

4753 (3983). **Jail Fees paid in Advance.** — No jailer is bound to receive any person committed under a warrant issued under the provisions of this chapter, until his jail fees for the time specified in such warrant are paid in advance.

4754 (3984). **Forfeiture of Bail; Proceedings; Indorsement of Magistrate as evidence.** — If the fugitive is discharged on bail, and fails to appear or surrender himself according to his bond or undertaking, the magistrate must indorse thereon "forfeited," sign his name thereto, and return it to the clerk of the circuit court by the first day of the next term; and a conditional judgment must be rendered thereon, and proceedings had, as in case of bonds or undertakings forfeited in that court, the indorsement of the magistrate being presumptive evidence of the forfeiture.

4755 (3985). **At expiration of Time, Discharged, Bailed, or Re-committed.** — At the expiration of the time specified in the warrant the magistrate may discharge or recommit him to a further day, or may take bail for his appearance and surrender, as provided in section 4751 (3981); and on his appearance, or if he has been bailed and appear according to the terms of his bond or undertaking, the magistrate may either discharge him therefor, or may require him to enter into a new bond or undertaking, to appear and surrender himself at another day.

4756 (3986). **If Prosecution pending here, Surrender discretionary.** — If a criminal prosecution has been instituted against such person under the laws of this State, the Governor may or not, at his discretion, surrender such person on the demand of the executive of another State, before he has been tried and punished, if convicted, or discharged.

4757 (3987). **Governor's Warrant, directed to Whom.** — A warrant from the executive may be directed to the sheriff, coroner,

or any other person whom he may think fit to intrust with the execution of the same.

4758 (3988). **Executed, Where and How.** — Such warrant authorizes the officer or person to whom it is directed to arrest the fugitive at any place within the State, and to require the aid of all sheriffs and constables, to whom the same is shown, in its execution.

4759 (3989). **Authority of Arresting Officers, etc.** — Every such officer or person has the same authority, in arresting the fugitive, to command assistance therein, as sheriffs and other officers by law have in the execution of criminal process directed to them, with the like penalties on those who refuse their assistance.

4760 (3990). **Confinement in Jail, When necessary.** — The officer or person executing such warrant may, when necessary, confine the prisoner arrested by him in the jail of any county through which he may pass, and the keeper of such jail must receive and safely keep the prisoner until the person having charge of him is ready to proceed on his route, such person being chargeable with the expenses of keeping.

[Criminal Code of Alabama, 1886, title iv. chap. iv. pp. 229-231.]

## APPLICATION FOR REQUISITION.

### EXTRADITION OF FUGITIVES FROM JUSTICE.

CHIEF EXECUTIVE OFFICE, MONTGOMERY, Ala., 189 .

To \_\_\_\_\_,  
\_\_\_\_\_.

DEAR SIR, — Replying to your favor of \_\_\_\_\_ I am instructed by the Governor to advise you as follows: —

Application for a demand by the Governor of this State upon the governor of any other State for the extradition of a fugitive from the justice of this State must clearly and succinctly set forth: (1) the name of the person to be demanded; (2) the offence with which he is charged; (3) the county in which the offence is laid; (4) the State to which the accused has escaped; (5) the name of a suitable person to be commissioned as the agent of this State in the extradition.

The application must come from, or be approved by, the solicitor of the circuit or his representative in the county, or a judge of a circuit, city, or county court, or the sheriff of the county, or the clerk of a circuit or city court; and it must aver under oath that the accused person has fled the State, that the ends of justice require that he be brought to trial, and that the process will not be used to collect a debt or to enforce a claim, but for the punishment of crime.

With the application there must be filed here two certified copies of an indictment, or, if no indictment has been found, two certified copies of an affidavit made before a magistrate of competent jurisdiction, charging the person to be extradited with having committed treason, felony, or other crime, one copy to be retained in this department, the other to be attached to and made part of the requisition. A warrant of arrest is not sufficient for the purpose of this proceeding.

A suitable person must be named and commissioned as agent on the part of this State to receive the accused from the proper authorities of the State to which he has escaped; and without special and satisfactory reason therefor, no person will be appointed and commissioned as such agent, in any case, who has a personal or private interest in the apprehension of the fugitive, or who has a strong motive for making any adjustment, settlement, or compromise with him by which the object of the requisition would be defeated.

Very respectfully,

\_\_\_\_\_,  
Private Secretary.

## FORMS.

[No. 1. — *Requisition.*]

STATE OF ALABAMA.

EXECUTIVE DEPARTMENT.

*The Governor of the State of Alabama to his Excellency the Governor of the State of* .

WHEREAS, it appears by the annexed copy of an \_\_\_\_\_, which is duly authenticated in accordance with the laws of this State, that \_\_\_\_\_ stands charged with

the crime of \_\_\_\_\_, committed in the County of \_\_\_\_\_  
in this State, and it has been represented to me that  
\_\_\_\_\_ ha fled from the justice of this State and ha taken  
refuge in the State of \_\_\_\_\_

Now, therefore, pursuant to the provisions of the Constitution  
and laws of the United States in such case made and provided,  
I request that you cause the said \_\_\_\_\_  
to be apprehended and delivered to \_\_\_\_\_, who is  
hereby authorized to receive and convey \_\_\_\_\_ to the State  
of Alabama, there to be dealt with according to law.

In witness whereof I have hereunto set my hand and caused the  
Great Seal of the State to be affixed at Montgomery, this  
day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred  
and ninety \_\_\_\_\_, and in the one hundred and \_\_\_\_\_ year of American  
independence.

\_\_\_\_\_,  
*Governor of Alabama.*

By the Governor,

\_\_\_\_\_,  
*Secretary of State.*

[No. 2. — *Agent's Warrant*].

## STATE OF ALABAMA.

### EXECUTIVE DEPARTMENT.

*The Governor of the State of Alabama, to all to whom these  
presents shall come, sends greeting.*

Know ye, that \_\_\_\_\_ is hereby authorized and  
empowered, as agent on the part of this State, to receive from the  
proper authorities of the State of \_\_\_\_\_

\_\_\_\_\_, charged with the crime of \_\_\_\_\_,

and who \_\_\_\_\_ fugitive from justice, and convey \_\_\_\_\_ to this State, to  
be dealt with according to law. All persons are therefore requested  
to permit the said agent at \_\_\_\_\_ own proper cost to remove the said

unmolested into this State, the said agent peaceably and lawfully  
behaving.

In witness whereof, I have hereunto set my hand and caused the Great Seal of the State to be affixed at Montgomery, this day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and ninety \_\_\_\_\_, and in the one hundred and \_\_\_\_\_ year of American independence.

\_\_\_\_\_,  
Governor of Alabama.

By the Governor,

\_\_\_\_\_,  
Secretary of State.

[No. 3. — *Rendition Warrant.*]

STATE OF ALABAMA.

EXECUTIVE DEPARTMENT.

\_\_\_\_\_, Governor of said State, to any Sheriff, Coroner, Constable, or other officer authorized by law to make arrest, greeting.

WHEREAS, his Excellency \_\_\_\_\_, Governor of the State of \_\_\_\_\_, by requisition dated the \_\_\_\_\_ day of \_\_\_\_\_, 188 \_\_\_\_\_, has demanded of me, as Governor of the State of Alabama, the surrender of \_\_\_\_\_, who, it appears, is charged by \_\_\_\_\_, in the County of \_\_\_\_\_ in said State, with the crime of \_\_\_\_\_, and has fled from justice in said State and taken refuge in the State of Alabama.

And whereas, there is produced with said requisition a duly certified copy of said \_\_\_\_\_, charging the said \_\_\_\_\_ with having committed, in said county, the said crime of \_\_\_\_\_

Now, therefore, I, \_\_\_\_\_, Governor of the State of Alabama, in obedience to the Constitution and laws of the United States and the laws of the State of Alabama, do command you to arrest the said \_\_\_\_\_, if he be found within the limits of this State, and to deliver \_\_\_\_\_ into the custody of \_\_\_\_\_, the duly authorized agent of the State of \_\_\_\_\_. And of the execution of this warrant you will make due return to me.

In testimony whereof, I have hereunto subscribed my name, and caused the Great Seal of the State to be affixed, at the capitol in

the city of Montgomery, this                      day of                      in the year  
of our Lord one thousand eight hundred and ninety-                      , and of the  
independence of the United States the one hundred and                      year.

\_\_\_\_\_,  
*Governor of Alabama.*

By the Governor,

\_\_\_\_\_,  
*Secretary of State.*

## ARIZONA.

### PROCEEDINGS AGAINST FUGITIVES FROM JUSTICE.

2358. The Governor of this Territory may, in cases authorized by the Constitution and laws of the United States, appoint agents to demand of the executive authority of any other State or Territory, or from the executive authority of any foreign government, any fugitive from justice, or person charged with treason; and the accounts of the agents appointed for that purpose shall, unless otherwise directed by the governor, be audited by the territorial auditor, and paid out of the territorial treasury.

2359. In cases provided for by the second article of the treaty between the United States and the Republic of Mexico for the extradition of criminals (concluded at Mexico on the eleventh day of December, one thousand eight hundred and sixty-one, and proclaimed by the President of the United States on the twentieth day of June, one thousand eight hundred and sixty-two), in addition to the power of the governor for that purpose, any justice of the Supreme Court of this Territory may make such requisition upon the executive or other principal authority of any State or Province of the Mexican Republic adjoining the boundaries of this Territory, agreeably to the stipulations of said article; *provided*, that if such requisitions be made by any such justice of the Supreme Court, the same may be under the seal of the district court, which, by law, he is assigned to hold.

2360. A person charged in any State or Territory of the United States with treason, felony, or other crime, who shall flee from justice and be found in this Territory, must, on demand of the ex-

ecutive authority of the State or Territory from which he fled, be delivered up by the governor of this Territory, to be removed to the State or Territory having jurisdiction of the crime.

2361. A magistrate may issue a warrant for the apprehension of a person so charged who shall flee from justice and be found in this Territory.

2362. The proceedings for arrest and commitment of the person charged shall be in all respects similar to those provided in this code for the arrest and commitment of a person charged with a public offence committed within this Territory, except that an exemplified copy of an indictment found, or other judicial proceeding had against him in the State or Territory in which he is charged to have committed the offence, may be received as evidence before the magistrate.

2363. If, from the examination, it appear that the accused has committed the crime alleged, the magistrate, by warrant reciting the accusation, must commit him to the proper custody in his county, for such time, to be specified in the warrant, as the magistrate may deem reasonable, to enable the arrest of the fugitive under the warrant of the executive of this Territory, on the requisition of the executive authority of the State or Territory in which he committed the offence, unless he gives bail as provided in the next section, or until he is legally discharged.

2364. The magistrate may admit the person arrested to bail by recognizance with sufficient securities, and in such sum as he may deem proper, for his appearance before him at a time specified in the recognizance, and for his surrender, to be arrested upon the warrant of the governor of this Territory.

2365. Immediately upon the arrest of the person charged, the magistrate shall give notice to the district attorney.

2366. The said attorney shall immediately thereafter give notice to the executive authority of the State or Territory, or to the prosecuting attorney or presiding judge of the criminal court of the city or county within the State or Territory, having jurisdiction of the offence, to the end that a demand may be made for the arrest and surrender of the person charged.

2367. The person arrested shall be discharged from custody or bail, unless, before the expiration of the time designated in the warrant or recognizance, he be arrested under the warrant of the governor of this Territory.



2368. The magistrate shall make return of his proceedings to the next district court of the county, which shall thereupon inquire into the cause of the arrest and detention of the person charged, and if he be in custody, or the time for his arrest have not elapsed, the court may discharge him from detention, or may order his recognizance of bail to be cancelled, or may continue his detention for a longer time, or may re-admit him to bail, to appear and surrender himself within a time to be specified in the recognizance.

2369. When the Governor of this Territory, in the exercise of the authority conferred by section two, article four, of the Constitution of the United States, or by the laws of this Territory, shall demand from the executive authority of any State or Territory of the United States, or of any foreign government, the surrender to the authorities of this Territory of a fugitive from justice, the accounts of the persons employed by him for that purpose shall be audited by the board of territorial auditors, and paid out of the territorial treasury.

2370. No compensation, fee, or reward of any kind can be paid to, or received by a public officer of this Territory, or other person, for a service rendered in procuring from the governor the demand mentioned in the last section, or the surrender of the fugitive, or for conveying him to this Territory or detaining him therein, except as provided for in the preceding section.

[Revised Statutes of Arizona, 1887; title xxvi., §§ 2358-2370, pp. 846, 847.]

Section 2357, same title, authorizes the Governor of the Territory to offer a reward for the apprehension of fugitives from the justice of the Territory. These are all the sections in the title xxvi. — “Proceedings against Fugitives from Justice.”

By subdivision 3 of an act approved April 10, 1889 (Laws of Arizona, 1889, p. 91), it is provided that no reward offered or paid shall exceed five hundred dollars, and that the Governor may, in his discretion, pay for services rendered in arresting or pursuing criminals, when in his judgment the public good will be promoted thereby, in cases where no reward was previously offered by the Territory.

In regard to section 2369 of the Revised Statutes of Arizona, above quoted, it is to be observed that by an act of the Territorial

legislature, approved October 30, 1866, the office of Territorial auditor was created, and sections 5, 8, 9, 10, and 11, chapter 20, Howell Code, entitled "Of the board of Territorial auditors," and all acts or parts of acts in conflict with the provisions of the act of October 20, 1866, were repealed.

[Compiled Laws of Arizona, 1877, p. 202.]

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## ARKANSAS.

### FUGITIVES FROM JUSTICE.

#### *Arrest of Fugitives from Justice upon Requisition.*

SECTION 3385. Whenever the executive of any other State or any Territory of the United States shall demand of the executive of this State any person as a fugitive from justice, having complied with the requisitions of the Act of Congress in that case made and provided, it shall be the duty of the executive of this State to issue his warrant, under the seal of the State, directed to any sheriff, coroner, or other person, whom he may think fit to intrust with the execution of such warrant.

SECT. 3386. Such warrant shall authorize the person to whom it may be directed to arrest the fugitive anywhere within the limits of this State, and to convey him to any place within the State which the executive may in his warrant direct; and commanding all sheriffs, constables, coroners, and other officers, to whom the same may be shown, to aid and assist in the execution thereof.

SECT. 3387. Every such warrant may be executed in any part of the State, and the officer or person to whom it is directed shall have the same power to command assistance therein, and in receiving and conveying to the proper place any person duly arrested, as sheriffs and other officers by law have in the execution of civil and criminal process directed to them, with like penalties on those who refuse their assistance.

SECT. 3388. The officer or person executing such warrant may, when necessary, confine the prisoner arrested by him in the jail of

any county through which he may pass in conveying such prisoner to the place commanded in the warrant, and the keeper of such jail shall receive and safely keep such prisoner until the person having him in charge shall be ready to proceed on his route.<sup>1</sup>

SECT. 3389. The expenses which may accrue under the foregoing provisions of this chapter, being first ascertained by the executive, shall, on his certificate, be allowed and paid out of the State treasury.

*Arrest of Fugitives from Justice before Requisition.*

SECT. 3390. Whenever any person within this State shall be charged, on the oath or affirmation of any creditable person, before any judge or justice of the peace of this State, with the commission of any crime in any other State or Territory of the United States, and that such person hath fled from justice, such judge or justice shall issue his warrant for the apprehension of such person.

SECT. 3391. If, on examination, it shall appear to the judge or justice that the person charged is guilty of the crime as alleged, he shall commit him to the jail of the county, or, if the offence is bailable, take bail for his appearance at the next term of the circuit court in the county.

SECT. 3392. The judge or justice shall proceed in the examination of such person in the same manner as is required when a person is brought before such officer charged with an offence against the laws of this State, and shall reduce the examination to writing, and make return thereof, as in other cases; and shall also send a copy of the examination and proceedings to the executive of this State without delay.

SECT. 3393. If, in the opinion of the executive, the examination contains sufficient evidence to warrant the finding of an indictment, he shall forthwith notify the executive of the State or Territory in which such crime is alleged to have been committed of the proceedings against the person arrested, and that he will be delivered on demand, without requiring a copy of the indictment to accompany the demand.

SECT. 3394. When a demand shall be made for the offender, the executive shall forthwith issue his warrant, under the seal of the

<sup>1</sup> No person so in custody can be discharged on writ of *habeas corpus*. Section 3568, fourth subdivision.

State, to the sheriff of the county wherein the party charged is committed or bailed, commanding him to surrender the accused to such messenger as shall be therein named, to be conveyed out of the State.

SECT. 3395. If the accused shall be at large, on bail or otherwise, the sheriff shall forthwith arrest him, anywhere within the State, and surrender him agreeably to the command of the warrant.

SECT. 3396. In all cases where the party shall have been admitted to bail, and shall appear according to the condition of his recognizance, and he shall not have been demanded, the circuit court may discharge the recognizance, or continue it, according to the circumstances of the case, such as the distance of the place where the offence is alleged to have been committed, the time since the arrest, the nature of the evidence, and the like.

SECT. 3397. In no case shall the accused be kept in prison, or held to bail, beyond the end of the second term of the circuit court after the arrest, if no demand shall be made for him within that time, but he shall be discharged.

SECT. 3398. If any recognizance entered into under the provisions of this chapter shall be forfeited, it shall inure to the benefit of the county. Rev. Stat., chap. 67.

#### *Fugitives from the Justice of this State.*

SECT. 3399. Whenever the Governor of this State shall demand any fugitive from justice from the executive of another State or Territory, and shall have received notice that such fugitive will be surrendered, he shall issue his warrant, under the seal of the State, to some messenger, commanding him to receive and convey such fugitive to the sheriff of the county in which the offence was committed, or is by law cognizable.

SECT. 3400. The expenses which may accrue under the provisions of the preceding section, being ascertained to the satisfaction of the Governor, shall, on his certificate, be allowed and paid out of the treasury as other demands against the State. Rev. Stat., chap. 45, §§ 240, 241.

Sections 3401 and 3402 complete the chapter, and relate to Rewards.

[Mansfield's Arkansas Digest, 1884, chap lxix. pp. 709-712.]

## STATE OF ARKANSAS.

## EXECUTIVE OFFICE.

LITTLE ROCK, , 18 .

*To the Sheriff of                      County.*

SIR, — In making application for the issuance of requisitions by the Governor of this State on the Governor of other States, please observe —

*First.* That such application must be by petition made in duplicate according to form furnished by this office. If you have no blanks on hand, they will be sent you on application. This petition must be sworn to, and the application must be indorsed by the county judge or prosecuting attorney.

*Second.* To each of the duplicate petitions must be attached a certified copy of the indictment or (where no indictment has been found) affidavit made before a magistrate. If copy of affidavit is sent, this must be certified by magistrate to be a true copy of the affidavit on file in his office, and the county clerk must certify to the official character of the magistrate. These requirements must be strictly observed, for this office cannot otherwise comply with the acts of Congress in making the demand on the executive of a sister State; and if the petition for requisition, and the affidavit or indictment are not made out in duplicate, there will be nothing to retain on file in this office to show on what the Governor's action is based in making the demand, as one set must be attached to the requisition.

*Third.* If a term of the circuit court has intervened between the time of the commission of the crime of which the fugitive stands charged and the time for making an application for his extradition, a requisition will not be made unless the fugitive has been indicted or the person nominated for appointment as agent agrees in writing to pay all expenses to accrue for going after and bringing back the fugitive, and to make no demand against the State for reimbursement. This agreement must in all cases accompany a petition, but need not be in duplicate. But even in case of such agreement, good reasons should be given why the fugitive has not been indicted.

*Fourth.* When it can be done without great inconvenience, a statement from the prosecuting attorney should accompany the pe-

tition for a requisition, to the effect that from the evidence obtainable he believes he can convict the fugitive of the crime of which he stands charged. This requirement will not be enforced when proper grounds for urgency, and the inability to obtain such statement, is properly shown. But in all other cases such statement must accompany the petition if the State is expected to bear any part of the expenses of bringing the fugitive back. Many of the states are very exacting in the showing required to be made before they honor a requisition, and it is to meet these requirements that these rules are again promulgated, and I hope you will aid me in having them observed.

Very respectfully,

\_\_\_\_\_,

Governor.

*To his Excellency, \_\_\_\_\_, Governor of Arkansas.*

YOUR petitioner, \_\_\_\_\_, of the \_\_\_\_\_ of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_, would respectfully represent unto your Excellency that \_\_\_\_\_ stand charged by the accompanying certified copy of \_\_\_\_\_ with the crime of \_\_\_\_\_, committed in the County of \_\_\_\_\_, and State of Arkansas, on or about the day of \_\_\_\_\_, 18 \_\_\_\_\_. That the said \_\_\_\_\_, on or about the day above mentioned, at and within the County of \_\_\_\_\_, State aforesaid,

That on or about the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_, the said \_\_\_\_\_ fled from the State of Arkansas, and is now, as your petitioner verily believes, in the County of \_\_\_\_\_, in the State of \_\_\_\_\_, a fugitive from the justice of this State, and the grounds of such belief are as follows :

Wherefore, your petitioners pray that a requisition may issue upon the Governor of the said State of \_\_\_\_\_, and that \_\_\_\_\_, of the County of \_\_\_\_\_, and State of \_\_\_\_\_

Arkansas, may be appointed messenger of the State of Arkansas to go after, receive, and return the said fugitive to the County of \_\_\_\_\_, State of Arkansas, for trial.

I, \_\_\_\_\_, being first duly sworn, do solemnly declare that the facts set forth in the foregoing petition are true, and that a requisition for the above named fugitive is not sought for the purpose of collecting a debt, to allow any person to travel at the expense of the State, or to answer any private end whatever.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_.

\_\_\_\_\_  
*Justice of the Peace.*

I, \_\_\_\_\_, County Judge of \_\_\_\_\_ County, Arkansas, do hereby certify that the ends of justice require the return of \_\_\_\_\_,

\_\_\_\_\_  
*County Judge of \_\_\_\_\_ County, Arkansas.*

NOTE. — Requisitions will not be issued on petitions alone ; the petition must in all cases be accompanied by a certified copy of an indictment found against the fugitive, or, in the absence of an indictment, a certified copy of an affidavit made before and on file in the office of a magistrate, charging the fugitive with a crime. The petition and all other papers presented in connection with an application for a requisition *must be in duplicate.*

## CALIFORNIA.

### PROCEEDINGS AGAINST FUGITIVES FROM JUSTICE.

1547. [This section authorizes the Governor to offer rewards in certain cases.]

1548 (§ 665). A person charged in any State of the United States with treason, felony, or other crime, who flees from justice and is found in this State, must, on demand of the executive

authority of the State from which he fled, be delivered up by the Governor of this State, to be removed to the State having jurisdiction of the crime.

1549 (§ 666). A magistrate may issue a warrant for the apprehension of a person so charged, who flees from justice and is found in this State.

1550 (§ 667). The proceedings for the arrest and commitment of a person charged are, in all respects, similar to those provided in this code for the arrest and commitment of a person charged with a public offence committed in this State, except that an exemplified copy of an indictment found, or other judicial proceedings had against him in the State in which he is charged to have committed the offence, may be received as evidence before the magistrate.

1551 (§ 668). If from the examination it appear that the accused has committed the crime alleged, the magistrate, by warrant reciting the accusation, must commit him to the proper custody in his county, for such time, to be specified in the warrant, as the magistrate may deem reasonable, to enable the arrest of the fugitive under the warrant of the executive of this State, on the requisition of the executive authority of the State in which he committed the offence, unless he gives bail as provided in the next section, or until he is legally discharged.

1552 (§ 669). The magistrate may admit the person arrested to bail by an undertaking with sufficient securities, and in such sum as he deems proper, for his appearance before him at a time specified in the undertaking, and for his surrender to arrest upon the warrant of the Governor of this State.

1553 (§ 670). Immediately upon the arrest of the person charged, the magistrate must give notice thereof to the district attorney of the county.

1554 (§ 671). The district attorney must immediately thereafter give notice to the executive authority of the State, or to the prosecuting attorney or presiding judge of the court of the city or county within the State having jurisdiction of the offence, to the end that a demand may be made for the arrest and surrender of the person charged.

1555 (§ 672). The person arrested must be discharged from custody or bail unless, before the expiration of the time designated in the warrant or undertaking, he is arrested under the warrant of the Governor of this State.



1556 (§ 673). The magistrate must return his proceedings to the next county court of the county, which must thereupon inquire into the cause of the arrest and detention of the person charged; and if he is in custody, or the time for his arrest has not elapsed, it may discharge him from detention, or may order his undertaking of bail to be cancelled, or may continue his detention for a longer time, or readmit him to bail, to appear and surrender himself within a time to be specified in the undertaking.

1557 (§ 674). When the Governor of this State, in the exercise of the authority conferred by section 2, article iv., of the Constitution of the United States, or by the laws of this State, demands from the executive authority of any State of the United States, or of any foreign government, the surrender to the authorities of this State of a fugitive from justice, who has been found and arrested in such State or foreign government, the accounts of the person employed by him to bring back such fugitive must be audited by the Board of Examiners, and paid out of the State treasury.

1558. No compensation, fee, or reward of any kind can be paid to or received by a public officer of this State, or other person, for a service rendered in procuring from the Governor the demand mentioned in the last section, or the surrender of the fugitive, or for conveying him to this State, or detaining him therein, except as provided for in such section.

[Penal Code of California, 1872, title xii. chap. iv. pp. 340–343.]

SECT. 19. Section fifteen hundred and fifty-six of said code is hereby amended so as to read as follows:—

1556. The magistrate must return his proceedings to the Superior Court of the county, which must thereupon inquire into the cause of the arrest and detention of the person charged; and if he is in custody, or the time of his arrest has not elapsed, it may discharge him from detention, or may order his undertaking of bail to be cancelled, or may continue his detention for a longer time, or readmit him to bail, to appear and surrender himself within a time specified in the undertaking.

[Act of April 12, 1880; Acts Amendatory of the Penal Code, 23rd Session of Legislature, chap. lvi. p. 35.]

## APPLICATIONS FOR REQUISITIONS.

## STATE OF CALIFORNIA.

## EXECUTIVE DEPARTMENT.

SACRAMENTO, , 189 .

SIR, — I am directed by the Governor to ask your attention to the following : —

Every application to the Governor for a requisition upon the executive authority of any other State or Territory, for the delivery up and return of any offender who has fled from the justice of this State, must be in writing, and must be accompanied by the following documents and proofs : —

1. A duly attested copy of the indictment (in duplicate), if an indictment has been found against the offender.

2. If no indictment has been found, then the application must be accompanied by a duly attested copy (in duplicate) of the complaint, made before a court or magistrate having jurisdiction in such cases. And if a copy of the complaint is presented, such copy must be accompanied by affidavits to the facts constituting the offence charged.

3. There must in every case be sworn evidence that the person charged is a fugitive from justice, — that is, that he has fled from the State to avoid arrest.

The copy of the indictment or complaint should be attested by the clerk or a justice of the court, or by the magistrate. When taken before a justice of the peace, it must be accompanied by the usual certificate of the county clerk that he is a qualified and acting justice of the peace, and that the signature is genuine.

If no indictment has been found, and a copy of a complaint is presented, the affidavits in support thereof must be sufficient to establish a *prima facie* case, — such as would justify a grand jury in finding an indictment.

The affidavits to show that the person charged is a fugitive from justice should show, as particularly as may be, the time and circumstances of his flight, and in what State or Territory he now is.

If the offence was not of recent occurrence, sufficient reasons must be given why the application has been delayed.

The Governor, in his discretion, will require evidence of the character of the persons making the affidavits.

Notaries public not being "magistrates" within the meaning of the Federal law, no application for a requisition based upon affidavits made before a notary public will be granted.

The purpose in granting requisitions is to aid in the administration of the criminal law. No requisition will be issued in any case to aid in collecting a debt or enforcing a civil remedy against a person who has left the State. In all cases where indictments have not been found, and where the conduct of the prosecution is not in the hands of the law officers of the State, it must be made to appear that the application for a requisition is made in good faith, not for any private ends, but with a view to enforce the charge of crime against the offender. This rule will be applied with especial strictness in all cases of cheating, obtaining money by false pretences, embezzlement, and the like.

Duplicates of all papers furnished to the Governor will be required, in order that one set may be retained here, and the other attached to the requisition.

By General Statutes, c. 177, § 1, the Governor of this State is only authorized to deliver over to the executive of any other State or Territory, persons charged therein with crime, when the demand is accompanied by the same documents and proofs which are mentioned above, in paragraphs 1, 2, and 3.

Yours respectfully,

\_\_\_\_\_,  
*Private Secretary.*

#### EXTRACT FROM THE CONSTITUTION OF THE UNITED STATES.

Art. 4, sec. 2. . . . A person charged in any State with treason, felony, or other crime, who shall flee from justice and be found in another State, shall, on demand of the Executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

#### EXTRACT FROM THE LAWS OF THE UNITED STATES.

[1 U. S. Statutes at Large, 302.]

SECTION 1. Be it enacted by the Senate and House of Representatives of the United States in Congress assembled, That whenever the Executive authority of any State in the Union, or any of the Territories northwest or south of the river

Ohio, shall demand any person as a fugitive from justice, from the Executive authority of any such State or Territory to which such person shall have fled, and shall, moreover, produce the copy of an indictment found, or an affidavit made before a Magistrate of any State or Territory as aforesaid, charging the person so demanded with having committed treason, felony, or other crime, certified as authentic by the Governor or Chief Magistrate of the State or Territory from whence the person so charged fled, it shall be the duty of the Executive authority of the State or Territory to which such person shall have fled, to cause him or her to be arrested and secured, and notice of the arrest to be given to the Executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear; but if no such agent shall appear within six months from the time of the arrest, the prisoner may be discharged. And all costs or expenses incurred in the apprehending, securing, and transmitting such fugitive to the State or Territory making such demand, shall be paid by such State or Territory.

SECT. 2. And be it further enacted, That any agent appointed as aforesaid, who shall receive the fugitive into his custody, shall be empowered to transport him or her to the State or Territory from which he or she shall have fled. And if any person or persons shall by force set at liberty or rescue the fugitive from such agent while transporting, as aforesaid, the person or persons so offending, shall, on conviction thereof, be fined not exceeding five hundred dollars, and be imprisoned not exceeding one year.

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## COLORADO.

1533. SECTION 1. Whenever the executive of any other State or of any Territory of the United States shall demand of the executive of this State any person as a fugitive from justice, and shall have complied with the requisitions of the Act of Congress in that case made and provided, it shall be the duty of the executive of this State to issue his warrant under the seal of the State to apprehend the said fugitive, directed to any sheriff, coroner, or constable of any county of the State, or other persons whom the said executive may think fit to entrust with the execution of said process. Any of the said persons may execute such warrant anywhere within the limits of this State, and convey such fugitive to any place within this State which the executive in his warrant shall direct. Sect. 1274 (1), p. 480, G. L.; sect. 1, p. 341, R. S.

1534 (§ 2). Whenever the executive of this State shall demand a fugitive from justice from the executive of any other State or

Territory, he shall issue his warrant under the seal of the State, to some messenger, commanding him to receive the said fugitive and convey him to the sheriff of the proper county where the offence was committed. Sect. 1275 (2), p. 480, G. L. ; sect. 2, p. 341, R. S.

1535 (§ 3). The expenses which may accrue under the last preceding sections, being first ascertained to the satisfaction of the executive, shall on his certificate be allowed and paid out of the State treasury on the warrant of the auditor. Sect. 1276 (3), p. 480, G. L. ; sect. 3, pp. 341, 342, R. S.

1536 (§ 4). Whenever any person within this State shall be charged, upon the oath or affirmation of any credible witness, before any judge or justice of the peace, with the commission of any murder, rape, robbery, burglary, arson, larceny, forgery, or counterfeiting, in any other State or Territory of the United States, and that the said person hath fled from justice, it shall be lawful for the said judge or justice to issue his warrant for the apprehension of said person. If, upon examination, it shall appear to the satisfaction of such judge or justice that the said person is guilty of the offence alleged against him, it shall be the duty of the judge or justice to commit him to the jail of the said county, or if the offence is bailable according to the laws of this State, to take bail for his appearance at the next district court to be holden in that county. It shall be the duty of the said judge or justice to reduce the examination of the prisoner, and those who bring him, to writing, and to return the same to the next district court of the county where such examination is had, as in other cases, and shall also send a copy of the examination and proceedings to the executive of this State, so soon thereafter as may be. If, in the opinion of the executive of this State, the examination so furnished contains sufficient evidence to warrant the finding of an indictment against such person, he shall forthwith notify the executive of the State or Territory where the crime is alleged to have been committed, of the proceedings which have been had against such person, and that he will deliver such person on demand, without requiring a copy of an indictment to accompany such demand. When such demand shall be made the executive of this State shall forthwith issue his warrant under the seal of the State, to the sheriff of the county where the said person is committed or bailed, commanding him to surrender him to such messenger as shall be therein named, to be conveyed out of this State. If the said person shall be out on

bail, it shall be lawful for the sheriff to arrest him forthwith, anywhere within the State, and to surrender him agreeably to said warrant. Sect. 1277 (4), pp. 480, 481, G. L. ; sect. 4, p. 342, R. S.

1537 (§ 5). In cases where a party shall have been admitted to bail, and shall appear at the district court according to the condition of his recognizance, and no demand shall have been made of him, it shall be in the power of said court to discharge the said recognizance, or continue it according to the circumstances of the case, such as the distance of the place where the offence is alleged to have been committed, the time that hath intervened since the arrest of the party, and the strength of the evidence against him. If no demand be made upon the sheriff for him within that time, he shall be discharged from prison, or exonerated from his recognizance, as the case may be. Sec. 1278 (5), p. 481, G. L. ; sec. 5, pp. 342, 343, R. S.

1538 (§ 6). If the recognizance shall be forfeited, it shall inure to the benefit of the State. Sec. 1279 (6), p. 482, G. L. ; sec. 6, p. 343, R. S.

1539 (§ 7). In all cases where complaint shall be made, as aforesaid, against any fugitive from justice, it shall be the duty of the judge or justice to take good and sufficient security for the payment of all costs which may accrue from the arrest and detention of such fugitive, which security shall be by bond to the clerk of the district court, conditioned for the payment of costs, as above ; which bond, together with a statement of the costs which may have accrued on the examination, shall be returned to the office of the clerk of the district court ; and upon the determination of the proceedings against such fugitive within that county, the clerk shall issue a fee-bill as in other cases, to be served on the persons named in the bond, or any of them, which fee-bill shall be served and returned by the sheriff, for which he shall be allowed the same fees as are given him for serving notices. If the fees be not paid on or before the first day of the next district court to be holden in and for that county, nor any cause then shown why they should not be paid, the clerk may issue an execution for the same against those parties on whom the fee-bill has been served, and when the said fees are collected shall pay over the same to the persons respectively entitled thereto. The clerk shall be entitled to one dollar for his trouble in each case, besides the usual taxed fees which are allowed in other cases for like services. Nothing herein contained shall prevent the clerk from

instituting suits on said bonds in the ordinary mode of judicial proceedings, if he shall deem it proper. Sec. 1280 (7), p. 482, G. L. ; sec. 7, p. 343, R. S.

1540 (§ 8). If any person charged with or convicted of treason, murder, rape, robbery, burglary, arson, larceny, forgery, or counterfeiting shall break prison, escape or flee from justice, or abscond and secrete himself, in such cases it shall be lawful for the Governor, if he shall judge it necessary, to offer any reward not exceeding two hundred dollars for apprehending and delivering such person into custody of such sheriff or other officer, as he may direct. The person or persons so apprehending and delivering any such person as aforesaid, and producing to the Governor the sheriff or justice's receipt for the body, it shall be lawful for the Governor to certify the amount of such claim to the auditor, who shall issue his warrant on the treasury for the same. Sec. 1281 (8), pp. 482, 483, G. L. ; sec. 8, p. 343, R. S.

1541 (§ 9). 1. That there be, and hereby is, appropriated out of any money in the State treasury not otherwise appropriated, the sum of two thousand dollars, or so much thereof as shall be necessary, for the purpose of paying rewards offered by the Governor of the State, for the apprehension of persons charged with the crime of murder. Sec. 1, p. 207, Acts 1881.

1542 (§ 10). 2. That whenever the Governor, by his proclamation, shall offer a reward for the apprehension of any such person or persons mentioned in the first section of this act, the person making such arrest shall deliver the person or persons so arrested to the sheriff of the county where such crime was committed ; the said sheriff shall give to the person making such arrest and delivery a certificate that he has delivered to the said sheriff the person or persons named in the proclamation of the Governor. The Governor shall endorse on said certificate his approval of the same, and the amount of the reward so offered in his proclamation. On presentation to the auditor of State (of) such certificate, so endorsed by the Governor, he shall draw his warrant on the State treasurer for the amount so certified. Sec. 2, p. 207, Acts 1881 ; approved and in force Feb. 12, 1881.

[Gen. Statutes of the State of Colorado, 1883, chap. xliv., pp. 511-513.]

1823 (§ 10). Any county jail may be used for the detention and safe keeping of any fugitive from justice from another State or

Territory, and in this case the county shall be entitled to compensation at the rate prescribed by the board of county commissioners ; *Provided*, that the rate so charged shall be subject to the approval of the district judge, for the maintenance and safe keeping of such fugitive in custody, to be paid by the officer demanding the custody of such fugitive, to the sheriff of the county, and by him paid over to the treasurer of the county for the use of the county. Sec. 1397 (10) pp. 520, 521, G. L.

[Gen. Statutes of the State of Colorado, 1883, chap. lviii. p. 589.]

Section 1325, Gen. Stats., 1883, provides that the Governor may offer rewards in cases of murder or arson committed in Colorado.

The rules adopted by the Inter-State Conference, 1887 (see introduction to this appendix), are in force in Colorado.

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## CONNECTICUT.

SECT. 1671. The Governor may appoint agents to demand and receive, from the executive authority of another State, any fugitive from justice, or person charged with any high crime in this State ; and any application to the Governor for that purpose shall be sustained by a properly attested copy of the record of the proceedings against the accused person, with affidavits of one or more of the principal witnesses.

SECT. 1672. Any prosecuting officer, when required by the Governor, shall forthwith investigate the grounds of such application, and report to him all the material circumstances which may come to his knowledge, and his opinion as to the expediency of the demand.

SECT. 1673. When a demand shall be made upon the Governor, by the executive authority of another State, for the surrender of any person charged in such State with any high crime, any prosecuting officer, when required by the Governor, shall forthwith investigate the grounds of such demand, and report to him the situation and circumstances of the person so demanded, and whether he ought to be surrendered ; and if the Governor shall find that such demand is conformable to law, and ought to be



complied with, he shall issue his warrant, directed to any proper officer, requiring the arrest of such person, and his delivery to the agent appointed to receive him.

SECT. 1674. No person arrested upon such warrant shall be delivered over to the agent appointed to receive him, until he has been informed of the demand made for his surrender, and of the crime with which he is charged, and has had opportunity to apply for a writ of *habeas corpus*, if he claim such right of the officer making the arrest. And when such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the State's attorney of the county in which the arrest is made.

SECT. 1675. Any officer who delivers to such agent for extradition a person in his custody upon such warrant, without having complied with the provisions of the preceding section, shall be fined not more than one thousand dollars, or be imprisoned not more than one year, or both.

SECT. 1676. When an offender shall be apprehended in any neighboring State, and it may be necessary to convey him through this State to the place where the offence was committed, any justice of the peace, upon application made, and proof that lawful process has issued against such offender, shall issue a warrant, directed to any proper officer, or any person by name, who shall be sworn to the faithful performance of his duty, commanding him to cause such offender to be conveyed to the line of this State, nearest to the State where the offence was committed, there to be delivered to some proper officer ready to receive him; and the person to whom such warrant is directed shall obey it, upon tender of the lawful fees therefor.

SECT. 1677. When any person is found in this State charged with an offence committed in another State or Territory, and liable by the Constitution and laws of the United States to be delivered over upon the demand of the executive of such State or Territory, any judge of the Superior Court, upon the information of the State's attorney of the county where such information is made, and any city or police court having criminal jurisdiction, upon the complaint of the proper prosecuting officer of such court, may issue a warrant to arrest the person charged and bring him before the authority issuing such warrant, or some other authority empowered by this chapter to issue the same, to answer such in-

formation or complaint as in other criminal cases; but before such warrant shall be issued, some person shall make affidavit before the authority issuing the same to the facts necessary to bring the case within the provisions hereof.

SECT. 1678. If, upon the hearing of such information or complaint, the judge or court shall be satisfied upon due inquiry that the person arrested is a fugitive from justice, and that the proper authorities of such other State or Territory intend and are about to make a demand upon the executive of this State for the return of such person, he shall be required, if charged with an offence bailable in the State or Territory where committed, to recognize in a reasonable sum with sufficient sureties to appear before such judge or court at a future day, and to abide the order of such court or judge; and in appointing the day for the appearance of such person, a reasonable time shall be allowed in which to procure the warrant of the executive of this State for the arrest of such person.

SECT. 1679. If such person does not so recognize, or if the offence with which he is charged is not bailable in the State or Territory where committed, he shall be committed to the county jail in the county where such proceedings are had, and there detained until the day appointed for his appearance, in like manner as if the offence charged had been committed within this State.

SECT. 1680. If the person so recognized or committed appear before such judge or court upon the day ordered, he shall be discharged unless he is demanded by some person authorized by the warrant of the executive of this State to receive him, or unless such judge or court shall find cause to order his appearance at some future day, when he may be required to recognize or be committed and detained as before.

SECT. 1681. All recognizances taken under this and the three preceding sections shall be taken to the State, and if the person recognizing fails to appear according to the condition of his recognizance, the same shall be forfeited, and like proceedings shall be had as in case of other recognizances taken in criminal cases; provided, that if the person charged recognizes, or is committed, any person authorized by the warrant of the executive of this State may at all times take him into custody, and the same shall be a discharge of the recognizance, and not be deemed an escape.

**SECT. 1682.** The judge or court before whom such person shall have been examined and recognized or committed shall immediately cause written notice to be given to the State's attorney of the county where the examination takes place, if the proceedings are not had upon the information of such attorney, of the name of such person and of the cause of his arrest; and the said State's attorney, in all cases, shall immediately cause like notice to be given to the Governor of the State or Territory, or to the State's attorney, or to the judge of the criminal court of the city or county of the State or Territory in which the offence is charged to have been committed.

[General Statutes of Connecticut, 1888, title xix. chap. 100, pp. 367-369].

No rules or forms have been adopted in Connecticut with respect to applications for requisitions, except the following blank form, which is used by the State's attorneys in making such applications: —

COUNTY OF \_\_\_\_\_,  
STATE'S ATTORNEY'S OFFICE, \_\_\_\_\_, 189 .

*To his Excellency, the Governor.*

SIR, — In compliance with your regulations, I have the honor to make herewith application for a requisition upon the Governor of the State of \_\_\_\_\_, for \_\_\_\_\_, who stands complained of in this county for the crime of \_\_\_\_\_, and who, as appears by the accompanying affidavits, is a fugitive from the justice of this State.

In support of the application I inclose herewith certified copies of the complaint and warrant (with officer's return) against the said \_\_\_\_\_, and affidavits alleging the facts required to be established, and respectfully certify, —

1st. That in my opinion the ends of public justice require that the said \_\_\_\_\_ be brought back to this State for trial at the public expense.

2d. That I have, as I believe, within my reach, and will be able to produce on the trial, evidence to secure conviction.

3d. No other application has been made, nor has any requisition been issued for this person, growing out of the transaction set out in the present complaint.

4th. I believe that the criminal named is now in the State of \_\_\_\_\_, and there under arrest awaiting requisition.

5th. The said \_\_\_\_\_, at the time he fled therefrom, was a resident of this State.

I name \_\_\_\_\_ as a proper person to be designated as agent, and certify that he has no private interest in the arrest of the fugitive.

I am, sir, very respectfully,

\_\_\_\_\_,

*State's Attorney for the County of \_\_\_\_\_.*

## FORMS OF REQUISITION AND WARRANTS.

[No. 1. — *Requisition.*]

### STATE OF CONNECTICUT.

#### EXECUTIVE DEPARTMENT.

\_\_\_\_\_, Governor of the State of Connecticut. to his Excellency the Governor of the State of \_\_\_\_\_.

WHEREAS, it appears by the documents hereunto annexed (which I certify to be authentic), that \_\_\_\_\_ stand charged with the crime of \_\_\_\_\_, committed at \_\_\_\_\_, within our County of \_\_\_\_\_, on or about the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 189 : and that it has been represented to me that he ha fled from the justice of this State, and taken refuge in the State of \_\_\_\_\_ ;

Now, therefore, pursuant to the provisions of the Constitution and laws of the United States, I do hereby require that the said \_\_\_\_\_ be apprehended and delivered to the bearer hereof, \_\_\_\_\_, who is hereby duly authorized and appointed to receive and convey \_\_\_\_\_ to this State, here to be dealt with as to law and justice may appertain.

In testimony whereof, I have hereunto set my hand and seal of office, at the City of \_\_\_\_\_, in said State of Connecticut, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and ninety- \_\_\_\_\_.

SEAL

By his Excellency the Governor,

\_\_\_\_\_,

*Executive Secretary.*

[No. 2. — *Agent's Warrant.*]

## STATE OF CONNECTICUT.

## EXECUTIVE DEPARTMENT.

\_\_\_\_\_, *Governor of the State of Connecticut, to all to whom these presents shall come.*

Know ye, that I have authorized and empowered, and by these presents authorize and empower

to take and receive

, fugitive from justice, from the proper authorities of the State of \_\_\_\_\_, and convey to the State of Connecticut, there to be dealt with according to law.

In witness whereof, I have hereunto affixed my name and the seal of the Executive Department of this State, on this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and ninety-\_\_\_\_\_.

SEAL.

By his Excellency the Governor,

\_\_\_\_\_,

*Executive Secretary.*

[No. 3. — *Rendition Warrant.*]

## STATE OF CONNECTICUT.

## EXECUTIVE CHAMBER.

\_\_\_\_\_, *Governor of the State of Connecticut, to the Sheriff of the County of \_\_\_\_\_, or either of his Deputies, and to the Sheriffs of the several Counties in said State, or either of their Deputies.*

WHEREAS, it has been represented to me by the Governor of the State of \_\_\_\_\_, that

stands charged with the crime of

, committed in the County of

, in said State, and that \_\_\_\_\_ has fled from

justice in that State, and has taken refuge in the State of Connecticut; and the said Governor of \_\_\_\_\_, having, in pursuance of the Constitution and laws of the United States, demanded of me that I shall cause the said \_\_\_\_\_ to be arrested and delivered to \_\_\_\_\_, who is duly authorized to receive \_\_\_\_\_ into his custody and convey \_\_\_\_\_ back to the said State of \_\_\_\_\_;

And whereas the said representation and demand is accompanied by properly attested copies of the proceedings in said State of \_\_\_\_\_, against the said \_\_\_\_\_, and with the proper affidavits of witnesses, whereby the said \_\_\_\_\_ is charged with the said crime and with having fled from said State, and taken refuge in the State of Connecticut, which said proceedings are certified by the said Governor of \_\_\_\_\_ to be duly authenticated; and, whereas, I find that said demand is conformable to law and ought to be complied with,

You are therefore required to arrest and secure the said \_\_\_\_\_, wherever \_\_\_\_\_ may be found within the State, and to deliver \_\_\_\_\_ into the custody of the said \_\_\_\_\_, to be taken back to said State from which \_\_\_\_\_ fled, pursuant to the said requisition; and of this precept and your doings endorsed thereon you will make return to me.

Given under my hand and the seal of the Executive Department of the State, at the City of Hartford, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and \_\_\_\_\_.

SEAL.

By the Governor,

\_\_\_\_\_,

*Executive Secretary.*

## DELAWARE.

AN ACT IN RELATION TO REQUISITIONS FOR FUGITIVES  
FROM JUSTICE.

*Be it enacted by the Senate and House of Representatives of the  
State of Delaware in General Assembly met :*

SECTION 1. The Governor, in any case authorized by the Constitution of the United States may, on demand, deliver over to the executive authority of any other State or Territory any person charged therein with treason, felony, or other crime committed therein; and he may, on application, appoint an agent to demand of the executive authority of any other State or Territory any person charged with felony who has fled from the justice of this State; but such demand or application must be accompanied by sworn evidence that the party charged is a fugitive from justice, and that the demand or application is made in good faith for the punishment of crime and not for the purpose of collecting a debt or pecuniary mulct, or of removing the alleged fugitive to a foreign jurisdiction with a view there to serve him with civil process, and also by a duly attested copy of an indictment or an information, or a duly attested copy of a complaint made before a court or magistrate authorized to take the same; such complaint to be accompanied by an affidavit or affidavits to the facts constituting the offence charged by persons having actual knowledge thereof, and such further evidence in support thereof as the Governor may require. Fugitive convicts shall also be surrendered and demanded upon the record of their conviction, or sworn evidence, duly authenticated, satisfactory to the Governor.

SECT. 2. When such demand or application is made, the Attorney-General shall, if the Governor requires it, forthwith investigate the grounds thereof and report to the Governor all the material facts which may come to his knowledge, and especially in the case of a person demanded, whether he is held in custody or is under recognizance to answer for any offence against the laws of this State, or by force of any civil process, with an opinion as to the legality and necessity of complying with the demand or application.

SECT. 3. If, in case of demand for the surrender of a person charged with an offence committed in another State or Territory, the Governor decides that it is proper to comply with the demand, he shall issue a warrant to the sheriff of the county in which such person so charged may be found, commanding him forthwith to arrest and bring such person before the Chief Justice, or any judge of the superior court, to be examined on the charge; and upon the return of the warrant by the sheriff with the person so charged in custody, the judge before whom the person so arrested is brought, and to whom the warrant is returned, shall proceed to hear and examine such charge, and upon proof made in such examination by him adjudged sufficient, shall commit such person to the jail of the county in which such examination is so had for a reasonable time, to be fixed by the judge in the order of commitment, and thereupon shall cause notice to be given to the executive authority making such demand, or to the duly authorized agent of such executive authority appointed to receive the fugitive, and on payment of all costs by such agent, such fugitive shall be delivered to him, to be thence removed to the proper place for prosecution; and if such agent does not appear within the time so fixed and pay the costs as aforesaid, the sheriff shall discharge the person so imprisoned. Whenever the Attorney-General shall have been called on in such case for any service under this act, a reasonable charge for his services may be taxed by the judge as a part of the costs to be paid as aforesaid, and in default thereof to be paid by the State treasurer upon a draft drawn on him for the same. Bail shall be taken for the appearance of the accused by the judge before whom he is brought in pursuance of the provisions of this section, as in other cases.

SECT. 4. When an affidavit is filed before the Chief Justice or any judge of the superior court, or a justice of the peace, setting forth that a person charged with the commission of an offence against the laws of any other State or of any of the Territories of the United States, and which, if the act had been committed in this State, would by the laws thereof have been a crime, is, at the time of filing such affidavit, within the county where the same is filed, such judge or justice of the peace shall issue his warrant, directed to the sheriff or any constable of the county, commanding him forthwith to arrest and bring before him the person so charged.



SECT. 5. When a person is arrested in pursuance of the preceding section and brought before the officer who issued the warrant, the officer shall hear and examine such charge, and, upon proof by him adjudged to be sufficient, commit such person to the jail of the county in which such examination is had.

SECT. 6. When a person is committed to jail by a judge or justice of the peace under the preceding section, such judge or justice of the peace shall forthwith give or cause to be given notice, by letter or otherwise, to the sheriff of the county in which such offence was committed, or to the person injured by such offence, or to the person upon whose affidavit the arrest was made; and no person so committed shall be detained longer in jail than is necessary to allow a reasonable time to the persons so notified, after they receive such notice, to apply for and obtain the proper requisition for the person so committed. In all cases arising under this and the two preceding sections, bail shall be taken as in other cases.

[Passed at Dover, March 9, 1883.]

## FORMS.

[No. 1. — *Agent's Warrant.*]

### STATE OF DELAWARE.

#### EXECUTIVE DEPARTMENT.

\_\_\_\_\_, *Governor of the State of Delaware, to his Excellency, the Governor of the State of* \_\_\_\_\_.

Know you, that we have constituted and appointed, and by these presents do constitute and appoint \_\_\_\_\_, \_\_\_\_\_ County, in the State of Delaware, our agent to serve the requisition for \_\_\_\_\_, who stand charged with the crime of \_\_\_\_\_, committed in the County of \_\_\_\_\_, in said State, and who, it is represented, has fled from the justice of this State, and taken refuge in the State of \_\_\_\_\_; and the said \_\_\_\_\_ is hereby authorized and empowered to receive and convey such fugi-

tive to the State of Delaware, there to be dealt with according to law.

And we do hereby request, that protection, aid, and assistance may be given and granted to the said in the discharge of his duty in this behalf.

In witness whereof, I have hereunto set my hand and caused the Great Seal of the State of Delaware to be affixed at Dover, this day of , in the year of our Lord, one thousand eight hundred and ninety- , and of the Independence of the United States, the one hundred and .

By the Governor,

\_\_\_\_\_,

*Secretary of State.*

[No. 2. — *Rendition Warrant.*]

## STATE OF DELAWARE.

### EXECUTIVE DEPARTMENT.

To , *greeting.*

WHEREAS, it appears by evidence, duly authenticated according to the of the State of , that a certain stands charged with the crime of , committed in the County of , in said State of ;

And whereas, it has been represented that the said has fled from the justice of the said State, and has taken refuge in the State of Delaware ;

And whereas, a requisition from his Excellency, , the Governor of said State of , has been made upon our Governor, requesting the apprehension and delivery of the said to the authorities of said State :

Now, therefore, you are hereby authorized and directed to arrest the said (if be found in your bailiwick), and deliver to , who is the duly authorized agent of the State of , to receive

and convey \_\_\_\_\_, the said \_\_\_\_\_, to the said State, there to be dealt with according to law. And for so doing, this shall be your sufficient warrant. All persons are required to render obedience hereto.

In testimony whereof, I, \_\_\_\_\_, Governor of the State of Delaware, have hereunto set my hand and caused the Great Seal of the State to be affixed, at Dover, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. one thousand eight hundred and \_\_\_\_\_.

By the Governor,

\_\_\_\_\_,  
*Secretary of State.*

## FLORIDA.

SECTION 7. It shall be the duty of the Governor of this State, when demand shall be made of him by the executive of any State or Territory, of any fugitive from justice, in the manner prescribed by the Act of Congress, approved 12th of February, 1793, to cause said fugitive to be arrested and secured, either by making public proclamation or by issuing an order to that effect, as he may deem most expedient, under his hand and the seal of the State, directed to all and singular the sheriffs of this State, therein commanding them to arrest the fugitive therein named; and it shall be the duty of any sheriff, upon receiving such order, forthwith to execute the same.<sup>1</sup>

SECT. 8. When any fugitive shall be arrested, he or she shall be immediately committed to some safe jail or prison; and it shall be the duty of the sheriff or deputy-sheriff, upon such arrest being made, to notify the Governor thereof, and also of the jail or prison to which said fugitive shall be committed; and said fugitive shall be dwelt [dealt?] with as by said act of Congress is provided.<sup>1</sup>

SECT. 9. Upon an affidavit made before any judge or justice of the peace of this State, that any person within the territorial jurisdiction of such judge or justice is a fugitive from justice from another State, specifying the State from which such person is a fugitive, and the crime with which he is charged, when and where

<sup>1</sup> Secs. 1 and 2, Act of Feb. 9, 1835.

committed, and that there is a warrant for his arrest issued by a competent court of the State from which he has fled, such judge or justice of the peace may issue a warrant for the arrest of the alleged fugitive, who, when arrested, shall be brought at once before the judge or justice issuing the warrant, or before some other judge or justice having jurisdiction in the premises, and examined; and if, upon such examination, there is found to be probable cause to justify the detention of the alleged fugitive, he may be committed by the judge or justice for a period of time not to exceed ten days, to await the warrant for the extradition of the alleged fugitive; but if, upon such examination, there is not found probable cause to justify the commitment of the alleged fugitive as aforesaid, he shall be at once discharged from custody.<sup>1</sup>

SECT. 10. No judge, justice of the peace, sheriff, constable, or other officer shall be obliged to take any action in or about the arrest and detention of such alleged fugitive from justice, nor shall any sheriff or jailer be obliged to receive or keep in custody such alleged fugitive, without prepayment of the costs to which the officer of whom the service is demanded shall be entitled, and in case of the sheriff or jailer, upon the commitment of such alleged fugitive from justice, the prepayment of the jail fees, including the cost of feeding the prisoner; and all such fees and costs shall be the same as are or may be provided for by law in like cases, and neither the State of Florida nor any county thereof shall be responsible or liable for any costs or expenses in the premises.<sup>1</sup>

[McClellan's Digest of Laws of Florida, chap. lxxxiv., pp. 437-438.]

## FORMS.

### [No. 1. — *Requisition.*]

IN THE NAME AND BY THE AUTHORITY OF

THE STATE OF FLORIDA,

\_\_\_\_\_, *Governor of Florida, to the Executive Authority  
of the State of* .

WHEREAS, it appears by the annexed documents, which are hereby certified to be authentic, that

<sup>1</sup> Sects. 1 and 2, chap. 3257, Act of Feb. 17, 1881.

stand charged with  
committed in the State of Florida, and information having been  
received that the said ha fled from  
justice, and taken refuge in ;

Therefore, I, \_\_\_\_\_, Governor of the State of Florida,  
have thought proper, in pursuance of provisions of the Constitution  
and laws of the United States, to demand the surrender of the  
said , as fugitive from justice, and that  
be delivered to , who is hereby appointed  
agent on the part of the State to receive .

Given under my hand, and the Great Seal of the State affixed,  
at the City of Tallahassee, this day of , A. D. one  
thousand eight hundred and ninety , and of the Independence  
of the United States of America the one hundred and .

\_\_\_\_\_  
*Governor of Florida.*

By the Governor,  
\_\_\_\_\_

*Secretary of State.*

[No. 2. — *Agent's Warrant.*]

\_\_\_\_\_, *Governor of said State, to all who shall see these  
presents, greeting.*

WHEREAS, I have this day demanded of the executive authority  
of the State of the surrender of  
, fugitive from justice, charged with  
, committed in the county of  
and State of Florida.

Now, be it known, that I have nominated, and do hereby con-  
stitute and appoint agent  
on the part of the State of Florida to receive from the constituted  
authorities of the State , the said  
, charged as  
aforesaid, and to convey to the county where the offence is  
charged to have been committed; and I do hereby forewarn any  
person or persons against rescuing, or any attempt to rescue, the  
said , or throwing  
any obstacles in the way of the execution of said agency by the said

, under the penalties prescribed by Congress and the States in such cases.

Given under my hand, and the Great Seal of the State affixed, at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. one thousand eight hundred and ninety-\_\_\_\_\_, and of the Independence of the United States of America the one hundred and \_\_\_\_\_.

By the Governor,  
\_\_\_\_\_

*Secretary of State.*

Among the forms of warrants sent me by the authorities of the State of Florida, I find no form of a warrant of rendition. For the form of such a warrant used in that State, reference may be had to *Ex parte Powell*, 20 Florida, 806, decided by the Supreme Court of Florida, June Term, 1884.

## GEORGIA.

SECTION 54, (57), (61). It is the duty of the Governor, under his warrant, to cause to be arrested and delivered up to the proper officers of any other State of the United States, any fugitive from justice from said State, upon demand made of him by the Executive of such other State in the manner prescribed by the laws and Constitution of the United States. And if such fugitive shall have assumed another name in this State, and the Governor is satisfied, by evidence on oath filed in his office, of the identity of such person with the fugitive demanded, he shall state the fact in his warrant for the arrest. 13 Ga. 98; 42 *Id.* 358.

SECT. 55, (58), (62). If any person demanded as a fugitive from justice is, at the time of such demand, under prosecution for an offence against the laws of this State, the Governor shall suspend his delivery until the issue is determined as to his guilt, and if condemned, until he shall have suffered the penalty of the law imposed.

SECT. 56, (59), (63). When a person, charged with the commission of an offence in some other State, shall flee into this, and is

pursued and caught, or some person in this State, finding, shall arrest him, it is the duty of the Governor, on oath filed in his office of the commission of the offence, and the identity and locality of the party, to issue his warrant for his arrest, as in other cases, and command his lodgment in any jail in the State, for as long as twenty days, and if, at their expiration, there is no formal demand made by the Governor of the State where the offence is alleged to be committed, he shall be discharged from custody; but upon affidavit, made before any proper officer, of the commission of the offence, and of such intended application, the accused shall be held under it five days. 63 Ga. 514.

SECT. 57, (60), (64). When the Governor or other officer issues such or any other warrant of arrest, it is the duty of the sheriffs, their deputies, coroners and constables, to execute them when placed in their hands.

[The Code of the State of Georgia, 1882, Part I. title iii. chap. i. pp. 20, 21.]

## REGULATIONS FOR REQUISITIONS.

AN Act to regulate the issuance of requisitions by the Governor of this State for the extradition of fugitives from the justice of said State, and for other purposes.

SECTION I. *The General Assembly of Georgia hereby enacts,* That in addition to any rules that are now or may hereafter be adopted by the Governor, the following rules shall be observed as a condition precedent to obtain a requisition by him for the extradition of any fugitive from the justice of this State: —

1. The application for a requisition as aforesaid must be made to the Governor of this State by a solicitor-general, or a solicitor of a county court, judge of said city or county court, or the mayor of any city or town of this State, and must show the full name of the fugitive for whom extradition is asked, the crime charged, the State or Territory to which he has fled, the full name of the person suggested to act as agent of this State to receive and convey said fugitive to this State, said agent in no case to be the prosecutor; but the Governor may, in his discretion, appoint some other suitable person as agent of this State to receive and convey the prisoner. The application must also show that the ends of public

justice require that the fugitive be brought back to this State for trial, and that the requisition is not wanted for the purpose of enforcing the collection of a debt, or for any private purpose whatever, but solely for the purpose of a criminal prosecution as provided by law.

2. The application must be accompanied by the affidavit of the prosecutor, if any, stating that the requisition is wanted for the sole purpose of punishing the accused, and not in any way to collect a debt or money, or to enforce the payment thereof.

3. If the fugitive has been indicted, two certified copies of the indictment or presentment must be forwarded to the Governor with said application.

4. If no indictment has been preferred, and an affidavit is the basis of the requisition, it must describe the crime committed with all the particularity required in an indictment, and two certified copies of such affidavit must accompany the petition for the requisition.

SECT. II. *Be it further enacted*, That when application is made as herein provided, and in accordance with such other rules as are now or may hereafter be adopted by the Governor, he shall then make his requisition for the extradition of such fugitive or fugitives according to the provisions of the laws of Congress of the United States in such cases made and provided.

SECT. III. *Be it further enacted*, That the solicitor making such application shall be entitled to a fee of five dollars for each application on which a requisition issues, to be paid as other fees in said cases, and to be included in the bill of costs in the court in which the trial may occur.

SECT. IV. *Be it further enacted*, That all laws and parts of laws in conflict with this Act be, and the same are hereby repealed.

Approved October 17, 1885.



## FORMS.

[No. 1. — *Requisition.*]

## STATE OF GEORGIA.

## EXECUTIVE DEPARTMENT.

\_\_\_\_\_, Governor of said State, to his Excellency, the  
Governor of the State of \_\_\_\_\_.

WHEREAS, it appears by the annexed copy \_\_\_\_\_, which is  
hereby certified to be authentic, that \_\_\_\_\_ stands charged with  
the crime of \_\_\_\_\_, committed in the County of \_\_\_\_\_, in this  
State, and it has been represented to me that \_\_\_\_\_ ha fled from  
the justice of this State, and ha taken refuge in the State of \_\_\_\_\_;

Now, therefore, pursuant to the provisions of the Constitution  
and laws of the United States, in such case made and provided,  
I do hereby request that the said \_\_\_\_\_ be apprehended and  
delivered to \_\_\_\_\_, who is hereby authorized to receive and  
convey \_\_\_\_\_ to the State of Georgia, there to be dealt with ac-  
cording to law.

In witness whereof, I have hereunto set my hand and caused the  
Great Seal of the State to be affixed, at the Capitol, in the city of  
Atlanta, the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord, one  
thousand eight hundred and ninety-\_\_\_\_\_, and of the Indepen-  
dence of the United States of America the one hundred and \_\_\_\_\_.

\_\_\_\_\_,  
Governor.

By the Governor,

\_\_\_\_\_,  
Secretary of State.

[No. 2. — *Agent's Warrant.*]

## STATE OF GEORGIA.

\_\_\_\_\_, Governor, to all to whom these presents shall  
come, greeting.

WHEREAS, it has been officially represented to me that  
stands charged by \_\_\_\_\_, in \_\_\_\_\_ County, State of  
Georgia, with the offence of \_\_\_\_\_;

And whereas, I have made application to his Excellency, the Governor of the State of \_\_\_\_\_, for the delivery of the said \_\_\_\_\_, as fugitive from justice, and have appointed, and by these presents I do appoint and commission \_\_\_\_\_, agent on the part of this State for the purpose of bringing the said \_\_\_\_\_ to this State, having jurisdiction of \_\_\_\_\_ crime aforesaid, whenever the Governor of the State of \_\_\_\_\_ shall cause \_\_\_\_\_ to be delivered up agreeably to the requisition aforesaid.

These are, therefore, to request and require all persons to permit the said \_\_\_\_\_ to receive and secure the said \_\_\_\_\_, and bring \_\_\_\_\_ unmolested into this State, having jurisdiction of \_\_\_\_\_ crime.

Given under my hand and the Seal of the Executive Department at the Capitol, in the city of Atlanta, the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord, one thousand eight hundred and ninety-\_\_\_\_\_, and of the Independence of the United States of America the one hundred and \_\_\_\_\_

\_\_\_\_\_,  
Governor.

By the Governor,

\_\_\_\_\_,  
*Secretary Executive Department.*

[No. 3. — *Rendition Warrant.*]

# STATE OF GEORGIA.

*By \_\_\_\_\_, Governor of said State, to all the Sheriffs and Constables thereof, greeting.*

WHEREAS, his Excellency, \_\_\_\_\_, Governor of the \_\_\_\_\_ of \_\_\_\_\_, and as the executive authority thereof, has demanded of me \_\_\_\_\_, a fugitive from justice from the \_\_\_\_\_ of \_\_\_\_\_, and has produced to me \_\_\_\_\_, charging the said \_\_\_\_\_ with having committed in the said \_\_\_\_\_ of \_\_\_\_\_, the crime of \_\_\_\_\_; which is duly certified as authentic by his Excellency, the Governor of the said \_\_\_\_\_ of \_\_\_\_\_, and has also appointed and commissioned \_\_\_\_\_, agent on the part

of the said \_\_\_\_\_ of \_\_\_\_\_, to receive the said fugitive from the civil authorities of this State, to the end that may be carried to the \_\_\_\_\_ of \_\_\_\_\_, there to be dealt with according to law; and whereas it is suspected that the said fugitive from justice \_\_\_\_\_ now within the jurisdictional limits of this State;

Now, in accordance with the provisions of an Act of Congress, passed the 12th February, 1793, respecting fugitives from justice, and in order that the said fugitive may be brought to trial for the offence for which \_\_\_\_\_ stands charged;

You are hereby commanded to arrest and deliver \_\_\_\_\_ to the said \_\_\_\_\_, agent, as aforesaid, so that may be carried to the \_\_\_\_\_ of \_\_\_\_\_, within whose jurisdiction said offence is alleged to have been committed. And I moreover charge and require all officers, both civil and military, in this State, to be vigilant in endeavoring to apprehend the said \_\_\_\_\_, fugitive as aforesaid.

Given under my hand and the Seal of the Executive Department, this \_\_\_\_\_ day of \_\_\_\_\_, 189 \_\_\_\_\_.

\_\_\_\_\_,  
Governor.

By the Governor,

\_\_\_\_\_,  
*Secretary Executive Department.*

## IDAHO.

**SECTION 8416.** A person charged in any State or Territory of the United States with treason, felony, or other crime, who flees from justice and is found in this Territory, must, on demand of the executive authority of the State or Territory from which he fled, be delivered up by the Governor of this Territory, to be removed to the State or Territory having jurisdiction of the crime.

**SECT. 8417.** A magistrate may issue a warrant for the apprehension of a person so charged, who flees from justice and is found in this Territory.

**SECT. 8418.** The proceedings for the arrest and commitment of a person charged, are, in all respects similar to those provided in this Code for the arrest and commitment of a person charged with a public offence committed in this Territory, except that an exemplified copy of an indictment found, or other judicial proceedings had against him in the State or Territory in which he is charged to have committed the offence, may be received as evidence before the magistrate.

**SECT. 8419.** If from the examination it appear that the accused has committed the crime alleged, the magistrate, by warrant reciting the accusation, must commit him to the proper custody in his county, for such time, to be specified in the warrant, as the magistrate may deem reasonable to enable the arrest of the fugitive under the warrant of the executive of this Territory, on the requisition of the executive authority of the State or Territory in which he committed the offence, unless he gives bail as provided in the next session, or until he is legally discharged.

**SECT. 8420.** The magistrate may admit the person arrested to bail by an undertaking with sufficient sureties, and in such sum as he deems proper, for his appearance before him at a time specified in the undertaking, and for his surrender to arrest upon the warrant of the Governor of this Territory.

**SECT. 8421.** Immediately upon the arrest of the person charged, the magistrate must give notice thereof to the district attorney of the county.

**SECT. 8422.** The district attorney must immediately thereafter give notice to the executive authority of the State or Territory, or to the prosecuting attorney or presiding judge of the court of the city or county within the State or Territory having jurisdiction of the offence, to the end that a demand may be made for the arrest and surrender of the person charged.

**SECT. 8423.** The person arrested must be discharged from custody or bail, unless, before the expiration of the time designated in the warrant or undertaking, he is arrested under the warrant of the Governor of this Territory.

**SECT. 8424.** The magistrate must return his proceedings to the next district court of the county, which must thereupon inquire into the cause of the arrest and detention of the person charged, and if he is in custody, or the time for his arrest has not elapsed, it may discharge him from detention, or may order his undertaking

of bail to be cancelled, or may continue his detention for a longer time, or readmit him to bail, to appear and surrender himself within a time to be specified in the undertaking.

SECT. 8425. When the Governor of this Territory, in the exercise of the authority conferred by Section 2, Article iv. of the Constitution of the United States, or by the laws of this Territory, demands from the executive authority of any State or Territory of the United States, or of any foreign government, the surrender to the authorities of this Territory, of a fugitive from justice, who has been found and arrested in such State, Territory, or foreign government, the accounts of the person employed by him to bring back such fugitive must be audited by the comptroller and paid out of the Territorial treasury.

SECT. 8426. No compensation, fee, or reward of any kind can be paid to, or received by, a public officer of this Territory, or other person, for a service rendered in procuring from the Governor the demand mentioned in the last section, or the surrender of the fugitive, or for conveying him to this Territory, or detaining him therein, except as provided for in such section.

[Revised Statutes of Idaho, 1887, title XII. chap. iv. pp. 874, 875.]

## FORMS.

[No. 1.—*Requisition.*]

### TERRITORY OF IDAHO.

#### EXECUTIVE DEPARTMENT.

\_\_\_\_\_, Governor of the Territory of Idaho, to his  
*Excellency, the Governor of the* \_\_\_\_\_ of \_\_\_\_\_.

It appearing to me, that one \_\_\_\_\_ stands charged with the crime of \_\_\_\_\_, committed in the County of \_\_\_\_\_, Territory of Idaho (as evidence of which \_\_\_\_\_ hereunto attached); and which \_\_\_\_\_ certified to be authentic. And it also appearing that the said \_\_\_\_\_ has fled the Territory of Idaho, and is believed to be within the limits of the \_\_\_\_\_;

Now, therefore, in the name and by the authority of the people of the Territory of Idaho, and in virtue of the rights and privileges

secured and guaranteed by the laws and Constitution of the United States, I do hereby demand and require of his Excellency, the Governor of the \_\_\_\_\_ of \_\_\_\_\_, that he cause the said \_\_\_\_\_ to be surrendered and delivered up to the justice of the Territory from which he has fled, if to be found within the jurisdiction of the \_\_\_\_\_ of \_\_\_\_\_.

And I have appointed, and do by these presents constitute and appoint \_\_\_\_\_, as the agent of the Territory of Idaho, to receive and convey back the said fugitive, to be delivered into the custody of the \_\_\_\_\_, at the expense of the Territory of Idaho.

Witness my hand and the Great Seal of Idaho Territory, at Boise City, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 189 \_\_\_\_\_.

\_\_\_\_\_,  
Governor.

By the Governor,

\_\_\_\_\_,  
Secretary of Idaho Territory.

[No. 2.— *Rendition Warrant.*]

## TERRITORY OF IDAHO.

### EXECUTIVE OFFICE.

*To all to whom these presents come, greeting.*

WHEREAS, his Excellency, \_\_\_\_\_, Governor of the \_\_\_\_\_ of \_\_\_\_\_, has made a requisition upon me, duly authenticated in accordance with the laws of the said \_\_\_\_\_ of \_\_\_\_\_, showing that one \_\_\_\_\_ stands charged by the indictment found in the County of \_\_\_\_\_, in said \_\_\_\_\_, with the crime of \_\_\_\_\_, and that the said \_\_\_\_\_ is a fugitive from the justice of said \_\_\_\_\_ of \_\_\_\_\_, and that he has taken refuge in the Territory of Idaho.

Now, therefore, I, \_\_\_\_\_, Governor of the Territory of Idaho, by virtue of the authority vested in me by law, do hereby command the Sheriff of \_\_\_\_\_ County, or other officer in this Territory having lawful authority, to arrest and deliver the said \_\_\_\_\_, without expense to the Territory of Idaho,

to \_\_\_\_\_, the duly authorized and commissioned  
 agent of the \_\_\_\_\_ of \_\_\_\_\_, to receive  
 the said \_\_\_\_\_; and for so doing this shall be a  
 sufficient warrant.

In testimony whereof, I have hereunto set my hand, and caused  
 the Great Seal of the Territory to be affixed.

Done at Boise City, the Capital of the Territory, this  
 day of \_\_\_\_\_, A. D. 189

\_\_\_\_\_,  
 Governor.

By the Governor,

\_\_\_\_\_,  
 Secretary.

## ILLINOIS.

### FUGITIVES FROM JUSTICE.

An Act to revise the law in relation to fugitives from justice.  
 (Approved Feb. 16, 1874. In force July 1, 1874.)

1. **Warrant for Arrest on Requisition** — § 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That whenever the executive of any other State, or of any Territory of the United States, shall demand of the executive of this State any person as a fugitive from justice, and shall have complied with the requisitions of the act of Congress in that case made and provided, it shall be the duty of the executive of this State to issue his warrant under the seal of the State, to apprehend the said fugitive, directed to any sheriff, coroner, or constable of any county of this State, or other person whom the said executive may think fit to entrust with the execution of said process. (See p. 86, R. S. 1845, p. 261, par. 1.)

2. **Arrest; Delivery.** — § 2. Any such officer or person may, at the expense of the agent making the demand, execute such warrant anywhere within the limits of this State, and require aid as in criminal cases, and may convey such fugitive to any place within

this State which the executive in his said warrant shall direct, and deliver such fugitive to such agent. (R. S. 1845, p. 261, par. 1.)

**3. Arrest of Accused before Requisition.** — § 3. When a person is found in this State, charged with an offence committed in another State or Territory, and liable, by the Constitution and laws of the United States, to be delivered over upon the demand of the executive of such other State or Territory, any judge, justice of the peace, or police magistrate may, upon complaint under oath, setting forth the offence, and such other matters as are necessary to bring the case within the provisions of law, issue a warrant to bring the person charged before the same or some other judge, justice of the peace, or police magistrate within this State, to answer to such complaint as in other cases. (R. S. 1845, p. 262, par. 4.)

**4. Commitment or Bail.** — § 4. If, upon examination, it shall appear to the satisfaction of such judge, justice, or police magistrate, that the said person is guilty of the offence alleged against him, it shall be the duty of the said judge, justice, or police magistrate to commit him to the jail of the county; or if the offence is bailable according to the laws of this State, to take bail for his appearance at the next circuit court to be holden in that county, except that in the County of Cook the recognizance shall be for the appearance of the accused to the next term of the criminal court of Cook County.

(544). **Examination Reduced to Writing; Copy to Court and Governor.** — It shall be the duty of the said judge, justice, or police magistrate to reduce the examination of the prisoner, and those who bring him, to writing, and to return the same to the next term of the court at which the prisoner is bound to appear, as in other cases; and [he] shall also send a copy of the examination and proceedings to the executive of this State as soon thereafter as may be.

**Governor to notify Executive of Other State.** — If, in the opinion of the executive of this State, the examination so furnished contains sufficient evidence to warrant the finding of an indictment against such person, he shall forthwith notify the executive of the State or Territory where the crime is alleged to have been committed, of the proceedings which have been had against such person, and that he will deliver such person on demand, without requiring a copy of an indictment to accompany such demand.



**Warrant; Surrender; Costs.**—When such demand shall be made, the executive of this State shall forthwith issue his warrant, under the seal of the State, to the sheriff of the county where the said person is committed or bailed, commanding him, upon the payment of the expense of such proceeding, to surrender him to such agent as shall be therein named, to be conveyed out of this State. If the said person shall be out on bail, it shall be lawful for the sheriff to arrest him forthwith, anywhere within the State, and to surrender him agreeably to said warrant. (R. S. 1845, p. 262, par. 4.)

**5. When Prisoner may be Discharged.**—§ 5. If the accused shall appear at the court according to the condition of his recognizance, unless he shall have been demanded by some person authorized by the warrant of the executive to receive him, the court may discharge the said recognizance, or continue it, or require a further recognizance, or commit the accused, on his failing to recognize as required by the court, according to the circumstances of the case, such as the distance of the place where the offence is alleged to have been committed, the time that has intervened since the arrest, and the strength of the evidence against the accused. In no case shall the accused be held in prison or to bail longer than till the end of the second term of the circuit court after his caption, except that in the County of Cook he may be held till the end of the third term of the criminal court of Cook County after his caption. If he is not demanded within that time he shall be discharged from prison, or exonerated from his recognizance, as the case may be. (R. S. 1845, p. 262, par. 5.)

**6. Forfeiture of Recognizance.**—§ 6. If the recognizance shall be forfeited, it shall enure to the benefit of the State. (R. S. 1845, p. 262, par. 5.)

**7. Bond for Costs; Proceedings on Same.**—§ 7. In all cases where complaint shall be made as aforesaid against any fugitive from justice, it shall be the duty of the judge, justice, or police magistrate, to take good and sufficient security for the payment of all costs which may accrue from the arrest and detention of such fugitive; which security shall be by bond, to the clerk of the circuit court, except that in the County of Cook the bond shall be to the clerk of the criminal court of said county, conditioned for the payment of costs as above; which bond, together with a statement of the costs which may have accrued on the examination, shall be

returned to the office of the clerk of the circuit court, or criminal court of Cook County, as the case may be ; and upon the determination of the proceedings against such fugitive within that county, the clerk shall issue a fee bill as in other cases, to be served on the persons named in the bond, or any of them ; which fee bill shall be served and returned by the sheriff, for which he shall be allowed the same fees as are given him for serving notices. If the fees be not paid on or before the first day of the next court, nor any cause then shown why they should not be paid, the clerk may issue an execution for the same, against those parties on whom the fee bill has been served ; and when the said fees are collected, shall pay over the same to the persons respectively entitled thereto. Nothing herein contained shall prevent the clerk from instituting suits on said bonds, in the ordinary mode of judicial proceedings, if he shall deem it proper. (R. S. 1845, p. 262, par. 7.)

**8. Fugitives from this State ; Warrant.** — § 8. Whenever the executive of this State (\*545) shall demand a fugitive from justice from the executive of any other State, he shall issue his warrant, under the seal of the State, to some messenger, commanding him to receive the said fugitive and convey him to the sheriff of the proper county where the offence was committed. (R. S. 1845, p. 261, par. 2.)

**9. Manner of Applying for Requisition.** — § 9. The manner of making application to the Governor of this State for a requisition for the return of a fugitive from justice shall be by petition, in which shall be stated the name of the fugitive ; the crime charged in the words of the statute defining the crime ; the county in which the crime is alleged to have been committed ; the time, as nearly as may be, when the fugitive fled ; the State or Territory to which he has fled, giving facts and circumstances tending to show the whereabouts of the fugitive at the time of the application. Such petition shall be verified by affidavit, and have endorsed thereon the certificate of the judge of the county court of the county in which the crime is alleged to have been committed, that the ends of justice require the return of such fugitive. Such petition shall be filed by the Governor in the office of the Secretary of State, to remain of record in that office. (L. 1867, p. 119, par. 1.)

**10. Copy of Indictment.** — § 10. When the application is based upon an indictment found, a copy of the indictment, certi-

fied by the clerk under the seal of the court in which the indictment was found, shall be attached to the petition.

Secs. 11-17, of same chapter, relate to rewards and payment of expenses.

[Revised Statutes of Illinois, 1874, chap. lx. pp. 543-546; the same provisions are found in an unofficial edition of the Revised Statutes of Illinois, published in 1885, pp. 655, 656; also in a still later unofficial edition of 1889.]

## REGULATIONS.

### APPLICATIONS FOR REQUISITIONS.

1. The petition must be *in duplicate*, and must meet the requirements of Sec. 9, Chap. LX. R. S. Ill., printed above, and furnish the name of a fit and competent person to be appointed agent of the State to go after, receive, and return the fugitive.<sup>1</sup>

2. In addition to the certificate of the county judge, the petition must be accompanied by a certificate from the State's attorney of the county wherein the charge is made, that he has examined the case, and believes that he has within his reach, and can produce on the trial, the evidence necessary to secure conviction.

3. Requisitions cannot be issued on petitions alone.

4. If the fugitive for whose return requisition is asked has been indicted, *duplicate copies* of the indictment, duly certified by the clerk, under the seal of the court in which the indictment was found, must accompany the petition.

5. If no indictment has been found against the accused, the petition must be accompanied by *duplicate copies* of a complaint made before and on file in the office of a justice of the peace or other magistrate, charging the fugitive with a crime, and duly certified by the magistrate as authentic copies. Such complaint should contain a concise statement of the facts and circumstances of the offence, which of itself, or with affidavits to accompany the same, must be sufficient to establish a *prima facie* case against the accused, such as would justify a grand jury in finding an indictment.

6. If the offence is not of recent occurrence, good reasons must be given for the delay.

<sup>1</sup> If requisition is desired on the Governor of Ohio, all papers should be presented *in triplicate*, as duplicate papers must accompany the requisition.

7. No requisition will be issued in any case to assist in collecting a debt, or enforcing a civil remedy against a person who has left the State; and if, after a requisition is issued, it shall become known that the object of seeking the return of the fugitive is to assist in collecting a debt, or to answer any end whatever other than to punish crime, such requisition will be at once recalled.

8. Especial care will be taken in issuing requisitions for persons charged with false pretences, embezzlement, and similar offences, and especial evidence required to make it clear that the only object of the application is to secure the criminal prosecution of the fugitive.

9. Requisitions will not be issued in any case for persons charged with bastardy. A prosecution for bastardy is not a criminal proceeding. See 35 Ill. Reports, p. 467.

10. The growing disinclination on the part of the executives of other States to surrender persons charged with statutory misdemeanors, compels the rule that requisitions will not be issued for fugitives charged with such offences, except in cases where special aggravation can be shown.

#### MESSENGERS' ACCOUNTS.

11. No account of expenses will be allowed unless the fugitive has been returned to the proper county in this State for trial, and as evidence of such return, the receipt of the sheriff of the county for the body of the fugitive must be attached to the account.

12. The messenger's account must state the actual number of miles travelled, stating particularly the routes and distances, and the points travelled to and from, in each State. It should be accompanied by vouchers for fees paid the officers of the State on whose Governor the requisition was made. In no case will such fees be allowed unless voucher is furnished. The account, under the law, must be verified by affidavit, and certified to by the judge of the county court of the county wherein the crime is alleged to have been committed.

13. The messenger's warrant must, in all cases, be returned with the account, with proper return thereon.

14. Messengers will be expected to travel by the shortest and most direct route, and mileage will invariably be computed by such route.

15. "The fees paid to the officers of the State on whose Gov-

ernor the requisition is made," will include only the fee to which the Secretary of State of such State is entitled for issuing Governor's warrant of arrest, and the legal fees to which the officers of such State to whom said warrant of arrest is directed are entitled for executing said warrant.

16. No charge for private conveyance, detective service, extra fee for sheriff or other officers making the arrest, board or railroad fare of prisoner, or any other extra expense whatsoever can, under the law, be allowed.

A strict compliance with the law and with these regulations will be necessary in order to secure the granting of a requisition by this Department.

Blank forms of petitions for requisitions and messengers' accounts will be furnished upon application to this office, or to the Secretary of State. The fee of the Secretary of State for issuing a requisition and messenger's warrant is \$2.00, and should, in all cases, accompany the application.

\_\_\_\_\_,  
Governor.

## FORMS.

[No. 1. — *Agents' Warrant.*]

### STATE OF ILLINOIS.

#### EXECUTIVE DEPARTMENT.

*To all to whom these presents shall come, greeting:*

Know ye that in accordance and compliance with the Constitution and laws of the United States and of this State, I have authorized and empowered and by these presents do authorize and empower as messenger and agent on the part of this State to receive from the proper authorities of the \_\_\_\_\_ of \_\_\_\_\_, who stand charged by \_\_\_\_\_ with the crime of \_\_\_\_\_, committed in the County of \_\_\_\_\_ in this State, and \_\_\_\_\_ now fugitive from justice, and convey \_\_\_\_\_ to this State, to the sheriff of said county where the offence was committed. All persons are therefore requested to permit the said agent, at his own proper cost, to remove the said

to the State of Illinois, there to be dealt with in accordance with the law.

In testimony whereof, I have hereunto set my hand and caused to be affixed the Great Seal of State. Done at the city of Springfield this            day of            , in the year of our Lord one thousand eight hundred and ninety            , and of the Independence of the United States the one hundred and            .

By the Governor,

\_\_\_\_\_,  
Secretary of State.

## INDIANA.

*Extract from Rules of Executive Department.*

### INTERSTATE EXTRADITION.

#### *Requisitions.*

120. The provisions of section 5278 of the Revised Statutes of the United States are as follows :

SECT. 5278. Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the Governor or chief magistrate of the State or Territory from whence the person so charged has fled, it shall be the duty of the executive authority of the State or Territory to which such person has fled to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within six months from the time of the arrest, the prisoner may be discharged. All costs or expenses incurred in the appre-

hending, securing, and transmitting such fugitive to the State or Territory making such demand, shall be paid by such State or Territory.

121. The provisions of section 5279 of said Revised Statutes are as follows :

SECT. 5279. Any agent so appointed who receives the fugitive into his custody shall be empowered to transport him to the State or Territory from which he has fled. And every person who, by force, sets at liberty or rescues the fugitive from such agent while so transporting him, shall be fined not more than five hundred dollars or imprisoned not more than one year.

122. The provisions of section 843 of the Revised Statutes, relating to the District of Columbia, are as follows :

SECT. 843. In all cases where the laws of the United States provide that fugitives from justice shall be delivered up, the Chief Justice of the Supreme Court shall cause to be apprehended and delivered up such fugitive from justice who shall be found within the District, in the same manner and under the same regulations as the executive authority of the several States are required to do by the provisions of sections 5278 and 5279. . . And all executive and judicial officers are required to obey the lawful precepts or other process issued for that purpose, and to aid and assist in such delivery.

123. The application should be addressed to the Governor, and should contain a statement in plain and concise language of the facts in the case, and of the reasons why, in the opinion of the applicant, a requisition should be issued ; that the person charged is a fugitive from justice ; that he has fled from the State to avoid arrest and before an arrest could be made, showing particularly the time and circumstances of his flight, and in what State or Territory he is, and that the ends of justice require that he be brought back to this State for trial.

124. A proper person should be nominated to be appointed and commissioned as the agent of the State to receive the fugitive when apprehended, giving his residence and official character, if any he have.

125. The application should be signed and verified by the affidavit of the applicant.

126. In all cases of forgery, false pretences, embezzlement, seduction, fraudulent transfers, selling mortgaged property, and sim-

ilar cases, the application should be verified by the injured party, and if not so done the reason why should be given.

127. In cases of seduction, the affidavit of one or more persons of well-known respectability should be furnished as to the previous good character and respectability of the injured party, and if no indictment has been found, the reason why must be shown under oath.

128. If the offence is not of recent occurrence, sufficient reasons must be given why the application has been delayed.

129. The application should be accompanied by a duly certified copy of the indictment, if one has been found against the offender.

130. If no indictment has been found, there should be furnished a certified copy of a sufficient affidavit made and pending before a magistrate in the county where the alleged offence was committed. The facts therein should be stated with the same particularity as in an indictment.

131. In certifying to a copy of an indictment or affidavit, it is recommended that the following form be used :

THE STATE OF INDIANA.      }  
County of \_\_\_\_\_ } ss :

I, \_\_\_\_\_, clerk of the circuit court (or justice of the peace,) within and for said county and State, do hereby certify that the above and foregoing is a full, true, and complete copy of the original indictment as returned by the grand jury (or affidavit) now on file in my office in the case of \_\_\_\_\_ vs. \_\_\_\_\_, now pending in said court (or before me) for trial.

Witness my hand and the seal of said court at \_\_\_\_\_, this  
day of \_\_\_\_\_ 18 \_\_\_\_.

[SEAL.]

\_\_\_\_\_,  
Clerk Circuit Court (or Justice of the Peace,) \_\_\_\_\_  
County, Indiana.

132. The purpose of granting requisitions being to aid in the administration of the criminal law, no requisition will be issued to aid in collecting a debt or enforcing a civil remedy against a person who has left the State, nor shall the criminal proceedings, when such offender is arrested, be used for any of said objects.

133. If an application has previously been made and granted



in a case arising out of the same facts, the reasons for making another application must be given.

134. If the alleged fugitive from justice is known to be under arrest, in either civil or criminal proceedings, the fact of such arrest and the nature of such proceedings must be fully stated.

135. The Governor in his discretion will require evidence of the character of the person making the affidavits.

136. The opinion of the prosecuting attorney of the circuit court as to the propriety of granting the requisition should be furnished. He should also certify that he has carefully examined the application and accompanying papers, and approved of the same.

137. If any oath is administered by any officer not having an official seal, his official character must be duly certified.

138. The following forms are recommended : —

#### APPLICATION FOR REQUISITION.

*To the Governor of Indiana.*

You are respectfully requested to issue a requisition to the Governor of the \_\_\_\_\_, for the apprehension and rendition of \_\_\_\_\_, who stands charged by an \_\_\_\_\_, pending in the \_\_\_\_\_ court, with the crime of \_\_\_\_\_, committed in \_\_\_\_\_ county, but who has, since the commission of said offence, and before an arrest could be made upon process issued by said court, and with a view of avoiding arrest, fled from the justice of the State of Indiana, and into the said State of \_\_\_\_\_, where I believe he now may be found.

The time and circumstances of his flight and the reasons for my belief as to where he may be found, are as follows : —

In my opinion the ends of justice require that he be brought back to this State for trial ; that the facts stated in said \_\_\_\_\_ are true, and that the prosecution of the said \_\_\_\_\_ would result in his conviction of the crime charged. I herewith present a duly certified copy of the original \_\_\_\_\_, now on file in the office of \_\_\_\_\_, in said county. I nominate \_\_\_\_\_, of \_\_\_\_\_, as a proper person to be appointed and commissioned by you as the agent of the State of Indiana, to receive the said fugitive, when he shall be apprehended, and bring him to this

State and deliver him into the custody of the sheriff of said county. The requisition asked for said fugitive is not sought for the purpose of collecting a debt, or enforcing a civil remedy, or to answer any other private end whatever, nor shall the criminal proceedings, when such offender is arrested, be used for any of said purposes.

Dated at \_\_\_\_\_, \_\_\_\_\_, 189 .

*The State of Indiana,* \_\_\_\_\_ *County.*

I, \_\_\_\_\_, being duly sworn, on my oath say that the facts stated in the foregoing application are true.

Subscribed and sworn to before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 189 .

[SEAL.] \_\_\_\_\_

*To the Governor.*

Having carefully examined the foregoing application and accompanying papers, and approved of the same, in my opinion it would be proper for you to issue the requisition asked.

\_\_\_\_\_,  
*Prosecuting Attorney.*

Blanks of the forms given in this section will be furnished by the Secretary of State upon application.

139. Two complete original sets of all the papers necessary upon the application must be furnished; one set to be attached to the requisition, and one set to be retained in this department.

140. Requisitions will be granted only upon the express condition inserted therein, that the State will pay no part of the expenses incurred in the pursuit, arrest, and return of the fugitive.

141. In no case will a requisition for a fugitive from justice be granted at the same time upon the governor of more than one State.

142. The law of Congress clearly contemplates an affidavit made in the county where the crime is alleged to have been committed, and before a magistrate having authority to hear the charge

when the fugitive shall have been returned by such process to make answer thereto.

143. If the application is based upon an affidavit made before a magistrate, it should appear from a certificate of the clerk of the circuit court of the proper county that he is an acting justice of the peace, duly elected and qualified, that his signature is genuine, and that his certificate is in due form of law.

144. As notaries public are not magistrates within the meaning of the laws of the United States, no requisition will be granted upon an affidavit made before a notary public.

145. An application should not be made for a requisition upon affidavit and information filed in the circuit court.

146. An application should not be made upon a constructive crime. The person charged must have been within the State at the time of the commission of the crime.

147. The Governor has no authority to require the surrender of fugitives who have taken refuge in any country beyond the jurisdiction of the United States, but an application will be made by him, as hereinafter provided, to the Secretary of State for the United States, for the surrender of a fugitive from justice, charged with a violation of the laws of this State.

148. A requisition will be mailed to the authority upon whom made, unless otherwise requested.

149. The agent's commission will be mailed with the requisition, unless otherwise requested. The agent shall, within a reasonable time, make due return of the commission to this department.

150. The Governor will exercise the right, in his discretion, for cause appearing, to revoke a requisition at any time, without notice.

151. Every requisition will be issued upon the express condition inserted therein, that if the same is not presented to the authority upon whom made within three months from the day of issue, it shall be deemed revoked, and shall become absolutely null and void.

#### *Warrants on Requisitions.*

160. The provisions of section 1599, R. S., 1881, being section 26 of "An act concerning proceedings in criminal cases," approved April 19, 1881, as follows:—

**SECTION 26.** Upon the demand of the executive authority of any State or Territory of the United States upon the Governor of this State, to surrender any fugitive from justice from said State or Territory pursuant to the Constitution and laws of the United States, he shall issue his warrant, reciting the fact of such demand and the charge upon which it is based, with the time and place of the alleged commission of the offence, directed generally to any sheriff or constable of any county of this State, commanding him to apprehend said fugitive and bring him before the circuit or criminal judge of this State who may be nearest or most convenient of access to the place at which the arrest may be made; and such warrant may be executed by any sheriff or constable in this State, in his own county or in any other county in this State.

161. The provisions of section 1600, being section 27 of said act, are as follows:—

**SECT. 27.** The judge before whom such alleged fugitive shall be brought shall proceed, by the examination of witnesses, to ascertain if the person apprehended be the fugitive demanded, and mentioned in the warrant of the Governor of this State; and, if satisfied of the identity of the person, the judge shall order him to be delivered up to the agent of the State or Territory demanding him, to be transported to such State or Territory, agreeably to the laws of the United States; otherwise, he shall discharge the person from custody.

162. The provisions of section 1601, being section 28 of said act, are as follows:—

**SECT. 28.** If no agent of the State or Territory making the demand be present, the fugitive shall be committed to the jail of the county in which the hearing before the judge is had; and such judge shall forthwith inform the Governor of this State of the fact of such commitment. And, on request by the agent of the State or Territory making the demand, upon the jailer having such fugitive in custody, and upon the order of the Governor of this State, such fugitive shall be delivered up to such agent, to be transported to the State or Territory from which he fled; and, if such fugitive be not demanded within ninety days after his commitment, the jailer shall discharge him.

163. The provisions of section 1602, being section 29 of said act, are as follows:—

**SECT. 29.** All costs incurred in apprehending, securing, and

keeping said fugitive shall be paid by the agent of the State or Territory making the demand, before he shall be permitted to remove him or receive him into custody.

164. The provisions of section 1603, being section 30 of said act, are as follows:—

SECT. 30. If it shall be made to appear to the Governor before the issuing of the warrant provided for by this act, that the alleged fugitive is held in custody or on bail to answer for any crime or misdemeanor against the laws of this State, the Governor of this State shall thereupon refuse to issue such warrant, informing the executive authority of the State or Territory making the demand of the grounds of such refusal.

165. The provisions of section 1604, being section 31 of said act, are as follows:—

SECT. 31. If it shall appear to the judge before whom the examination provided for by this act may be had, that the alleged fugitive is held in custody or on bail for any crime or misdemeanor against the laws of this State, such judge shall, for that reason, refuse to make an order for the delivery or removal of such fugitive, and shall immediately report the facts to the Governor of this State, who shall inform the Governor of the State or Territory making the demand thereof.

166. The provisions of section 1605, being section 32 of said act, are as follows:—

SECT. 32. No citizen or resident of this State shall be surrendered under pretence of being a fugitive from justice from any other State or Territory, where it shall be clearly made to appear to the judge holding the examination provided for by this act that such citizen or inhabitant was in this State at the time of the alleged commission of the offence, and not in the State or Territory from which he is pretended to have fled; and in such case the judge holding the examination shall discharge the person arrested, and forthwith report the facts to the Governor.

167. A requisition upon the Governor of this State for the extradition of any fugitive from justice should be accompanied by certified copies of the indictment or affidavit, and of all papers which were presented to the executive authority of the State or Territory from which the requisition came.

168. All papers should be certified by the executive authority making the requisition to be authentic.

169. It should be clearly made to appear by the requisition that the offence charged is a crime, according to the laws of the State or Territory from which the requisition came.

170. A requisition will not be honored for the extradition of any fugitive from justice unless the same conforms to the rules that govern in the granting of requisitions by the Governor of this State. *Particular attention is called to the fact that no requisition will be honored unless accompanied by a proper affidavit showing that the requisition was not sought to aid in collecting a debt or enforcing a civil remedy against the person charged.*

171. Every warrant will be issued upon the express condition inserted therein, that if it is not served within three months from the day of issue, it will be deemed revoked, and shall become absolutely null and void.

172. Explicit directions should be given as to the person and his post-office address, to whom the warrant should be mailed.

173. The Governor will exercise the right to revoke a warrant in the same manner as provided in case of a requisition.

## INTERNATIONAL EXTRADITION.

### *Application.*

180. When the extradition of a fugitive from justice is sought for an offence of which the courts of this State have jurisdiction, a request, as hereinafter stated, must be made to the Governor to apply to the Secretary of State for the United States for the extradition.

181. An application will not be made, except for an offence named in a treaty with the nation to which the person charged has fled or sought an asylum.

182. When an extradition is sought for an offence against the laws of the United States the application must be made through the Attorney-General, or the proper executive department of the United States, and a copy of the rules for that purpose will be furnished upon application to the Department of State at Washington.

183. A request to the Governor to apply for the institution of proceedings for an extradition should be carefully prepared, in ac-

cordance with the rules governing interstate extradition and the rules hereinafter given.

184. The request can be made upon the form given in Rule 138, for applying for an interstate requisition, by substituting for the word "issue" the words "apply for," and also for the words "Governor of the" the words "Secretary of State for the United States." Special care must be taken to give the correct post-office address of the person to be appointed agent to receive and return the fugitive to this State.

185. The existing treaty provisions between the United States and foreign powers in reference to extradition provide that the surrender shall only be made: Upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his or her commitment for trial if the crime had been there committed.

186. The evidence required to be used in the preliminary examination in the foreign State is set out in the three following sections, and should be carefully read and followed:—

187. If the fugitive has been convicted, and escaped thereafter, a transcript of the record of conviction and judgment, duly certified under the seal of the court, with the personal certificate of the judge of the court as to its genuineness, and authenticated under the great seal of the State where the conviction was had.

188. If no trial has been had and an indictment has been found, a copy of the indictment, together with a copy of one to three of the depositions, if any, taken before the Grand Jury, and upon which the indictment was found, with a copy of bench warrant, if any has issued, and the return thereto, certified and authenticated as above prescribed.

189. If no indictment has been found, but a prosecution has been instituted, and a warrant of arrest issued, a copy of the procedure in such case, together with a copy of all the evidence upon which such warrant of arrest issued (so far as such copy can be procured), and a copy of the warrant, with any return that may have been made thereto; all of which should be certified by the magistrate or judicial officer who issued the warrant, and, if a justice of the peace or officer having no seal, his official character should be properly certified, and the whole authenticated as above provided. It is recommended that the prosecution be based upon the affidavits of at least three persons, one or more of which should set forth as fully as possible the circumstances of the crime.

190. If the extradition of a fugitive is sought for several offences, copies of the several convictions, indictments, or procedures, certified and authenticated as hereinbefore directed, should be forwarded, and the request for extradition should name the several offences.

191. By the practice of some of the countries with which the United States have treaties, to entitle copies of depositions to be received in evidence, the party producing them is required to attest under oath that they are true copies of the original depositions, and it is therefore desirable that such agent either form a comparison of the copies with the originals, or, from having been present at the attestations of the copies, should be prepared to make such declaration. When the original depositions are forwarded such declaration is not required.

192. All requests, accompanied by the necessary papers herein enumerated, should be transmitted *in triplicate*, one copy being required for the files of the Department of State; one copy, duly authenticated by the Secretary of State, will be returned with the President's warrant for the use of the agent who may be designated to receive the fugitive; and one copy will be retained by the Governor for record in the Executive Department of this State.

193. A strict compliance with these formal requirements may save to the parties seeking the extradition of the fugitive criminal much delay and expense.

194. In causing requisitions to be made on the British authorities under the treaty of August 9, 1842, for the surrender of criminal fugitives from justice, the President of the United States will request the delivery of the person charged, it being understood that such evidence of criminality be subsequently exhibited before the British authorities as, according to the laws of the place where the person charged shall be found, would justify his commitment for trial if the crime of which he is accused had there been committed.

195. It is admissible, as constituting such evidence, to produce a properly certified copy of an indictment found against the fugitive by a Grand Jury, or any information made before an examining magistrate, accompanied by one or more depositions setting forth as fully as possible the circumstances of the crime.

196. By the provisions of section 14 of the English extradition act of 1870, "depositions or statements on oath, taken in a foreign State, and copies of such original depositions or statements, and foreign certificates of, or judicial documents stating the fact of a



conviction, may, if duly authenticated, be received in evidence of proceedings under this act."

197. By the provisions of section 15 of the above recited act, "Foreign warrants and depositions or statements on oath, and copies thereof, and certificates of or judicial documents stating the fact of a conviction, shall be deemed duly authenticated for the purposes of this act if authenticated in manner provided for the time being by law, or authenticated as follows: (1) If the warrant purports to be signed by a judge, magistrate, or officer of the foreign State where the same was issued; (2) if the depositions or statements or the copies thereof purport to be certified under the hand of a judge, magistrate, or officer of the foreign State where the same were taken to be the original depositions or statements, or to be true copies thereof, as the case may require, and (3) if the certificate of, or judicial documents stating the fact of conviction purports to be certified by a judge, magistrate, or officer of the foreign State where the conviction took place; and if in every case the warrants, depositions, statements, copies, certificates, and judicial documents (as the case may be) are authenticated by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other minister of State; and all courts of justice, justices and magistrates shall take judicial notice of such official seal, and shall admit the documents so authenticated by it to be received in evidence without further proof."

198. The expense of the apprehension, delivery, and return is to be borne by the party applying for the requisition of the government, except in cases of crimes against the United States.

199. As far as applicable. it is recommended that in charging an offence the forms given in Bishop's Directions and Forms or Wharton's Precedents of Indictments and Pleas be followed.

200. All the proceedings should be taken, and the necessary papers prepared, under the direction of the prosecuting attorney.

201. Unless otherwise requested, all correspondence in regard to the extradition will be had with such prosecuting attorney.

202. The different crimes for which, and the names of the nations from which, a person may be extradited, may be found in any work on extradition.

203. Too much care cannot be exercised in the preparation of extradition papers, and thus avoid much vexatious delay and secure a prompt consideration of such papers.

## FORMS.

[No. 1. — *Requisition.*]

## STATE OF INDIANA.

*By the executive authority thereof, to his Excellency, the Governor  
of the State of \_\_\_\_\_, greeting.*

It appearing from the attached papers, which are authentic, that  
\_\_\_\_\_ stands charged by an  
\_\_\_\_\_ pending in \_\_\_\_\_ County, with the crime of \_\_\_\_\_,  
committed therein, and it having been shown to the Governor that  
the defendant has fled from the justice of this State, and has taken  
refuge in the State of \_\_\_\_\_ ;

Therefore, in pursuance of the provisions of the Constitution and  
laws of the United States respecting fugitives from justice, requisition is hereby made of the executive authority of said State for the  
apprehension of the defendant as a fugitive from justice, and his  
delivery to \_\_\_\_\_, who is appointed as the agent to receive  
him and transport him to this State for trial of said charge.

Witness the Seal of the State and the signature of the Governor,  
in whom is vested the executive power of the State.

Dated at Indianapolis, this \_\_\_\_\_ day of \_\_\_\_\_, in the  
year of our Lord, one thousand eight hundred and ninety-\_\_\_\_\_.  
\_\_\_\_\_.

By the Governor,  
\_\_\_\_\_,

*Secretary of State.*

[No. 2. — *Agent's Warrant.*]

## STATE OF INDIANA.

*To \_\_\_\_\_, greeting.*

WHEREAS, requisition has been made by the executive authority  
of this State upon the executive authority of the State of \_\_\_\_\_,  
for the apprehension and rendition of \_\_\_\_\_,  
as a fugitive from the justice of this State, and it has been shown  
that he stands charged by an \_\_\_\_\_ in  
\_\_\_\_\_ County with the crime of \_\_\_\_\_, committed therein ;

Therefore, you are hereby constituted and appointed the agent of this State, and, as such, empowered to proceed to the State of aforesaid, and demand and receive from the proper authorities thereof the body of the said fugitive, and bring h to this State, and deliver h into the custody of the sheriff of said county, that he may be held to answer said charge. You will make due return of this writ to the Governor of this State.

No provision has been made for the payment, by the State, of any expenses.

Given under the Seal of the State and the hand of the Governor, at Indianapolis, this                      day of                      189 .  
\_\_\_\_\_.

By the Governor,  
\_\_\_\_\_,  
Secretary of State.

State of Indiana,                      County.

This writ came to hand                      189 .

As commanded, I proceeded to the State of  
and demanded and received from the proper authorities thereof, namely, the                      of                      County, the body of the defendant, and brought h to this State, and delivered h into the custody of the sheriff of                      County.  
\_\_\_\_\_, *Agent*.

State of Indiana,                      County.

I have this day received from                      , agent, the body of                      named in this writ.

\_\_\_\_\_,  
Sheriff of                      County.  
Dated at                      this                      day of                      189 .

[*No. 3. — Rendition Warrant.*]

#### STATE OF INDIANA.

*To any Sheriff or Constable of any County of Indiana, greeting.*

WHEREAS, the executive authority of the State of  
has, by requisition of his Excellency,                      , Gov-  
ernor thereof, dated at                      , on the                      day of                      ,  
189 , directed to the Governor of this State, and deposited in the

office of the Secretary of State, demanded that  
   be arrested as a fugitive from the justice of the State  
 of   , aforesaid, and delivered to  
   , the agent of said authority appointed to receive him ;  
 and has, moreover, produced therewith a copy of an   ,  
 charging the person so demanded with having committed a crime  
 within the jurisdiction of said State, which copy is certified as  
 authentic by the Governor aforesaid ; and

Whereas, the commission of said crime is charged in manner  
 and form as follows, namely : —

It is therefore ordered, by the executive authority of the State  
 of Indiana, in accordance with the requirements of the Constitution  
 and laws of the United States, and of an Act of the General As-  
 sembly, approved March 9, 1867, that you do arrest and secure  
 the said   , wherever found within this State,  
 and forthwith bring h   before the circuit or criminal judge of  
 this State who may be nearest or most convenient of access to the  
 place at which the arrest may be made, to the end that such judge  
 may, by the examination of witnesses, be satisfied of the identity  
 of the person so arrested, before ordering his delivery to the agent  
 of the authority demanding him ; and that he be then delivered to  
 said agent to be transported to the State from which   he has fled.

And for your doings in the premises this shall be your sufficient  
 warrant when duly returned and filed in the office of the Secretary  
 of State.

Given under the Seal of the State and the hand of the Governor  
 at Indianapolis, this                   day of                   , 189 .

\_\_\_\_\_,  
*Governor of Indiana.*

By the Governor,  
   \_\_\_\_\_,  
   *Secretary of State.*

State of Indiana,   County.

This Writ came to hand   , 189 .

As commanded, I have arrested   , and  
 now have h                   in custody before the Honorable, the judge of the  
   Circuit Court for identification.

\_\_\_\_\_,  
*Sheriff of   County.*



as to show the actual route travelled, and the number of miles, and be verified by affidavit, and be accompanied by proof that the fugitive for whom requisition was made has been returned and delivered into the custody of the proper authority ; *provided*, that the State shall, in no case, pay the costs of returning the fugitive where he has not been tried, unless it shall be shown to the satisfaction of the Governor that the want of trial has not been owing to any fault or neglect on the part of the person or persons interested in the prosecution.

4172. No compensation, fee, or reward of any kind can be paid to, or received by, a public officer of this State for a service rendered or expense incurred in procuring from the Governor the demand mentioned in the last section, or the surrender of the fugitive, or for conveying him to this State, or detaining him therein, except as provided by law.

4173. A violation of the last section is a misdemeanor.

4174. No executive warrant for the arrest and surrender of any person demanded by the executive authority of any other State or Territory, as a fugitive from the justice of such State or Territory, and no requisition upon the executive authority of any other State or Territory, for the surrender of any person as a fugitive from the justice of this State, shall be issued unless the requisition from the executive authority of such other State or Territory, or the application for such requisition upon the executive authority of such other State or Territory, shall be accompanied by sworn evidence that the party charged is a fugitive from justice, and by a duly attested copy of an indictment, or a duly attested copy of a complaint, made before a court or magistrate authorized to receive the same.

4175. Whenever a demand is made upon the Governor of this State by the executive of any other State or Territory, in any case authorized by the Constitution and laws of the United States, for the delivery of any person charged in such State or Territory with any crime, if such person is not held in custody or under bail to answer for any offence against the laws of the United States or of this State, he shall issue his warrant under the seal of the State, authorizing the agent who makes such demand, either forthwith or at such time as may be designated in the warrant, to take and transport such person to the line of this State at the expense of such agent, and may also by such warrant require all peace officers to afford all needful assistance in the execution thereof.

## EXAMINATION BY MAGISTRATE.

4176. If any person be found in this State charged with any crime committed in any other State or Territory, and liable by the Constitution and laws of the United States to be delivered over upon the demand of the Governor thereof, any magistrate may, upon complaint on oath setting forth the offence and such other matters as are necessary to bring the case within the provisions of law, issue a warrant for the arrest of such person.

4177. If, upon examination, it appear that there is reasonable cause to believe the complaint true, and that such person may be lawfully demanded of the Governor, he shall, if not charged with murder, be required to enter into an undertaking, with sufficient surety in a reasonable sum, to appear before such magistrate at a future day, allowing reasonable time to obtain the warrant from the Governor, and abide the order of such magistrate in the premises.

4178. If such person does not give bail, or if he is charged with the crime of murder, he must be committed to prison, and there detained until such day, in like manner as if the offence charged had been committed within this State.

4179. A failure of such person to attend before the magistrate at the time and place mentioned in the undertaking, is a forfeiture thereof.

4180. If such person appear before the magistrate upon the day ordered, he must be discharged unless he is demanded by some person authorized by the warrant of the Governor to receive him, or unless the magistrate see good cause to commit him, or to require him to enter into a new undertaking for his appearance at some other day to await a warrant from the Governor.

4181. Whether the person so charged be bound to appear, be committed, or discharged, any person authorized by the warrant of the Governor may at any time take him into custody, and the same is a discharge of the undertaking, if there be one.

4182. The complainant in any such case is answerable for all the costs and charges, and for the support in prison of any person so committed, and the magistrate, before issuing his warrant or hearing the cause, must require the complainant to give security for the payment of all such costs, or may require them in advance.

4183. Upon the appointment of any agent for the arrest of a fugitive from justice under the provisions of this chapter, the Governor is hereby authorized to make it a condition upon such appointment and the issue of the writ, that the same shall be executed without expense to the State, if in his opinion justice and equity so require.

4184. When, in the opinion of the Governor, expenses incurred in the arrest of fugitives from justice should be paid by the State, such expenses shall be made out by items in detail, and sworn to, and approved by him and at least two other members of the executive council, and when so approved shall be audited and paid out of the general revenue of the State, and this section shall be sufficient authority for the payment of the same.

[Revised Code of 1882, annotated by Miller, Vol. II. title xxv. chap. 9, pp. 991-993. These sections form sections 5555-5568, in McClain edition of the Code, 1888.]

## STATE OF IOWA.

### EXECUTIVE DEPARTMENT.

DES MOINES, April, 1890.

THE following regulations concerning the issuing of requisitions upon Governors of other States and Territories, for the arrest and delivery of fugitives from justice, are furnished for the information and convenience of all who may be interested.

#### *Requisitions.*

1. When application is made for a requisition upon the executive of any State or Territory, such application must be accompanied, —

(a) By *original* sworn evidence that the accused has, since the commission of the offence with which he is charged, actually fled from the State of Iowa, giving the date of fleeing as near as may be, and is a fugitive from the justice thereof. The affidavit must also show that the process is not sought for the purpose of collecting a debt, or satisfying some private end, but solely in furtherance of public justice.



(b) By a duly attested copy of an indictment, or of an information made before a magistrate, in the county in which the offence is alleged to have been committed.

The official character of a magistrate (other than a judge of a court of record) must be properly attested.

2. Duplicates of the foregoing papers will be required, — one set to accompany the requisition, the other to remain on file in this office.

3. Where the application is based on an information filed before a magistrate, it must be accompanied by the affidavit of some person having knowledge, stating in detail the facts constituting the offence charged. When the crime charged is forgery, if the information is not sworn to by the person whose name is alleged to be forged, the affidavit of such person must be produced, or a satisfactory reason given why it cannot be so produced.

4. A requisition will not be issued when there is reason to believe that the object sought is the collection of a debt, or the accomplishment of any other private end.

5. The State or Territory upon which the requisition is desired, should be designated, and a suitable person named to act as agent in receiving and returning the fugitive. A sheriff or other sworn peace officer is preferred for such agent; and none other will be appointed unless he is recommended by a county attorney, by the sheriff or the board of supervisors of the county, by the authorities of the city or town in which the offence was committed, or by the complainant with a statement that the person so recommended has no private interest in the arrest of the fugitive.

6. As the Governor is authorized to issue requisitions in cases of "treason or felony" only, none will be issued for persons charged only with misdemeanor.

7. When the fugitive whose rendition is sought is at large on bail, or for any other reason deemed proper by the Governor, the State will be at no expense on account of his return.

8. Papers for requisitions may be sent to this office by mail, and will receive as prompt attention as if brought by a messenger. The State will not pay express charges upon such papers.

9. In addition to the foregoing, some of the States insist on certain special requirements being complied with before surrendering a fugitive from another State, as follows: —

(a) Where the application for a requisition is based on a pre-

liminary information, the States of *Massachusetts* and *Ohio* require that the copy of such information or complaint be accompanied by affidavits to the facts constituting the offence charged.

(b) The State of *Massachusetts* requires proof that the alleged fugitive has fled from the State making the demand, in order to avoid arrest.

(c) The State of *Ohio* requires sworn evidence that the demand for the requisition "is made in good faith, for the punishment of crime, and not for the purpose of collecting a debt or pecuniary mulct, or of removing the alleged fugitive to a foreign jurisdiction with a view there to serve him with a civil process."

(d) The State of *Ohio* requires that requisitions upon that State shall be accompanied with duplicates of the papers. *Triplicate* papers will therefore be necessary at this office when demand is to be made upon the Governor of that State.

10. The Governor cannot make demand of foreign powers for the surrender of fugitives. Upon proper showing, however, he will make request for the same of the President of the United States. Instructions will be furnished any person desiring the issuance of such requisition, upon application to this office.

11. When the fugitive has been returned, the agent may, when the State is liable therefor, file with the Governor a bill in accordance with instructions furnished him. Upon the approval thereof by the Governor and a majority of the members of the Executive Council, the Auditor of State will issue a warrant therefor. The State will be at no expense on account of returning a fugitive, if such fugitive is not indicted and tried by a jury, or pleads guilty to the charge preferred against him in the papers upon which the requisition was issued, unless it be shown to the satisfaction of the Governor that the want of trial has not been owing to any fault or neglect on the part of the person or persons interested in the prosecution.

HORACE BOIES,  
*Governor of Iowa.*

## FORMS.

[No. 1. — *Requisition.*]

## STATE OF IOWA.

## EXECUTIVE DEPARTMENT.

*The Governor of the State of Iowa, to his Excellency, the Governor of*

WHEREAS, it appears by the annexed papers duly authenticated in accordance with the laws of this State, that stand charged by \_\_\_\_\_ with the crime of \_\_\_\_\_, committed in the County of \_\_\_\_\_, in this State, which I certify to be a crime under the laws of this State, and that he has fled from this State and \_\_\_\_\_ fugitive from the justice thereof;

And whereas, it is believed such fugitive has taken refuge in the \_\_\_\_\_ of \_\_\_\_\_;

Now, therefore, I, \_\_\_\_\_, Governor of the State of Iowa, pursuant to the provisions of the Constitution and laws of the United States, do hereby make requisition for the apprehension of the said fugitive, and for \_\_\_\_\_ delivery to \_\_\_\_\_, who is hereby authorized to receive and convey \_\_\_\_\_ to the State of Iowa, here to be dealt with according to law.

In testimony whereof, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Iowa.

Done at Des Moines, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and ninety-\_\_\_\_\_, of the Independence of the United States, the one hundred and \_\_\_\_\_, and of this State the \_\_\_\_\_.

By the Governor,

\_\_\_\_\_,  
Secretary of State.

[No. 2. — *Agent's Warrant.*]

STATE OF IOWA.

EXECUTIVE DEPARTMENT.

*To all to whom these presents shall come, greeting.*

WHEREAS, I have made application in accordance with the Constitution and Revised Statutes of the United States, to his Excellency, the Governor of the \_\_\_\_\_ of \_\_\_\_\_, for the delivery of \_\_\_\_\_, as a fugitive from justice, charged with the crime of \_\_\_\_\_, in the county of \_\_\_\_\_;

Now, therefore, in the name and by the authority of the people of Iowa, I, \_\_\_\_\_, Governor of the State of Iowa, do, by these presents, appoint and commission \_\_\_\_\_, of \_\_\_\_\_, agent on the part of this State, for the purpose of bringing the said fugitive into this State, having jurisdiction of the crime aforesaid, whenever the Governor of the said \_\_\_\_\_ of \_\_\_\_\_ shall cause \_\_\_\_\_ to be delivered up according to the requisition aforesaid.

These are, therefore, to request and require all persons to permit the said agent to receive and secure the said fugitive and bring \_\_\_\_\_ unmolested into this State, said agent peaceably and lawfully behaving. The State will be at no expense on account hereof, unless the accused is returned to the State, indicted (if not already so) and tried.

In testimony whereof, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Iowa.

Done at Des Moines, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and ninety-\_\_\_\_\_, of the State of Iowa the \_\_\_\_\_, and of the Independence of the United States the one hundred and \_\_\_\_\_.

By the Governor,

\_\_\_\_\_,  
Secretary of State.

[*No. 3. — Rendition Warrant.*]

## STATE OF IOWA.

## EXECUTIVE DEPARTMENT.

*To any Sheriff, Coroner, or other Peace Officer in the State of Iowa, greeting.*

WHEREAS, his Excellency, \_\_\_\_\_, Governor of the \_\_\_\_\_ of \_\_\_\_\_, has demanded of the Governor of this State \_\_\_\_\_, charged with the crime of \_\_\_\_\_, as a fugitive from justice from said \_\_\_\_\_ of \_\_\_\_\_, and has complied with the requirements of the Revised Statutes of the United States in such cases made and provided ;

Now, therefore, I, \_\_\_\_\_, Governor of the State of Iowa, in the name and by the authority of the people thereof, by this, my warrant, do authorize and require you to arrest the aforesaid \_\_\_\_\_, anywhere within the limits of this State, and cause \_\_\_\_\_ to be safely kept and delivered to \_\_\_\_\_, who is duly authorized by the Governor of said \_\_\_\_\_ of \_\_\_\_\_ to receive \_\_\_\_\_, the said agent paying all the fees for the arrest and detention of said fugitive. And I do hereby command that all sheriffs, coroners, constables, and other officers of this State to whom this warrant may be shown, aid and assist in the execution thereof; and that you certify to me your proceedings under the same.

In testimony whereof, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Iowa.

Done at Des Moines, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and ninety-\_\_\_\_\_, of the State of Iowa the \_\_\_\_\_, and of the Independence of the United States the one hundred and \_\_\_\_\_.

By the Governor,

\_\_\_\_\_,  
Secretary of State.

[No. 4. — *Authority to Foreign Agent.*]

## STATE OF IOWA.

## EXECUTIVE DEPARTMENT.

To \_\_\_\_\_, *Agent of the* \_\_\_\_\_ of \_\_\_\_\_.

WHEREAS, a demand has been made upon the Governor of the State of Iowa, by the executive authority of the \_\_\_\_\_ of \_\_\_\_\_, for the delivery of \_\_\_\_\_, now alleged to be within the jurisdiction of this State, as \_\_\_\_\_ fugitive from the justice of said \_\_\_\_\_, as defined by the Constitution and laws of the United States;

And whereas, such demand is accompanied by a copy of \_\_\_\_\_, charging such alleged fugitive with \_\_\_\_\_, a crime under the laws of said \_\_\_\_\_, and the accompanying papers being certified to be authentic by the Governor of said \_\_\_\_\_ of \_\_\_\_\_;

Now, therefore, I, \_\_\_\_\_, Governor of the State of Iowa, do, by this my warrant, authorize and empower you, if such fugitive be not held in custody or under bail to answer any offence against the laws of the United States or of this State, forthwith to take and transport said \_\_\_\_\_ to the line of this State, at your own expense; and I do hereby require all peace officers to whom this warrant may be shown to afford you all needful assistance in the execution hereof at your expense.

In testimony whereof, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Iowa.

Done at Des Moines, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and ninety-\_\_\_\_\_, of the Independence of the United States the one hundred and \_\_\_\_\_, and of this State the \_\_\_\_\_.

By the Governor,

\_\_\_\_\_  
Secretary of State.

## KANSAS.

*Be it enacted by the Legislature of Kansas :*

(2825) SECTION 1. Whenever the executive of any other State or Territory shall demand of the executive of this State any person as a fugitive from justice, and shall have complied with the requisites of the Act of Congress, in that case made and provided, it shall be the duty of the Governor of this State to issue his warrant, under the seal of the State, directed to any Sheriff, Coroner, or other person whom he may think fit to intrust with the execution of such warrant.

(2826) SECT. 2. The warrant shall authorize the officer or person to whom it is directed, to arrest the fugitive anywhere within the limits of this State, and convey him to any place therein named, and shall command all sheriffs, coroners, constables, and other officers to whom the warrant may be shown, to aid and assist in the execution thereof.

(2827) SECT. 3. Every warrant so issued may be executed in any part of the State; and the officer or person to whom it is directed shall have the same power to command assistance therein, and in receiving and conveying to the proper place any person duly arrested by virtue thereof, as sheriffs and other officers by law have in the execution of civil or criminal process directed to them, with like penalties on those who refuse their assistance.

(2828) SECT. 4. The officer or person executing such warrant may, when necessary, confine the prisoner arrested by him in the jail of any county through which he may pass in conveying such prisoner to the place commanded in the warrant; and the keeper of such jail shall receive and safely keep such prisoner, until the person having him in charge shall be ready to proceed on his route.

(2829) SECT. 5. The expenses which may accrue under the foregoing sections of this act, being first ascertained to the satisfaction of the executive, shall, on his certificate, be allowed and paid out of the State treasury.

(2830) SECT. 6. When any person within this State shall be charged, on the oath or affirmation of any credible witness, before any judge or justice of a court of record, or a justice of the peace, with the commission of any crime in any other State or Territory

of the United States, and that he fled from justice, it shall be lawful for the judge or justice to issue his warrant for the apprehension of the party charged.

(2831) SECT. 7. If, upon examination, it shall appear to the judge or justice that the person charged is guilty of the crime alleged, he shall commit him to the jail of the county; or, if the offence is bailable, take bail for his appearance at the next term of the district court in the county.

(2832) SECT. 8. The judge or justice shall proceed in the examination in the same manner as is required when a person is brought before such officer charged with an offence against the laws of this State, and shall reduce the examination to writing, and make return thereof as in other cases, and shall also send a copy of the examination and proceedings to the Governor of this State, without delay.

(2833) SECT. 9. If, in the opinion of the Governor, the examination contains sufficient evidence to warrant the finding an indictment, he shall forthwith notify the executive of the State or Territory in which the crime is alleged to have been committed, of the proceedings against the person arrested, and that he will be delivered on demand, without requiring a copy of an indictment to accompany the demand.

(2834) SECT. 10. When a demand shall be made for the offender, the Governor shall forthwith issue his warrant, under the seal of the State, to the sheriff of the county wherein the party charged is committed or bailed, commanding him to surrender the accused to such messenger as shall be therein named, to be conveyed out of the State.

(2835) SECT. 11. If the accused shall be at large, on bail or otherwise, it shall be lawful for the sheriff to arrest him forthwith, anywhere within the State, and to surrender him agreeably to the command of the warrant.

(2836) SECT. 12. In all cases where the party shall have been admitted to bail, and shall appear according to the condition of his recognizance, and he shall not have been demanded, the district court may discharge the recognizance or continue it, according to the circumstances of the case, such as distance of the place where the offence is alleged to have been committed, the time since the arrest, the nature of the evidence, and the like.

(2837) SECT. 13. In no case shall the party be kept in prison



or held to bail beyond the end of the second term of the district court after the arrest; and, if no demand is made for him within that time, he shall be discharged.

(2838) SECT. 14. When any such recognizance shall be forfeited, it shall inure to the benefit of the State.

(2839) SECT. 15. When a complaint shall be made against any person, as provided by this act, the judge or justice shall take from the prosecutor a bond to the clerk of the district court, with sufficient security to secure the payment of the costs and expenses which may accrue by occasion of the arrest and detention of the party charged, which bond shall be certified and returned, with the examination, to the office of the clerk of the district court.

(2840) SECT. 16. Upon the determination of the proceedings in that court, the clerk may issue fee bills, which shall be served on the principal securities in the bond by the sheriff, in the same manner as other fee bills; for which service the sheriff shall be allowed the same fees as for serving notices.

(2841) SECT. 17. If the costs and charges are not paid on or before the first day of the next term of the district court, nor any cause shown why they should not be paid, the clerk may issue execution for the same against the parties on whom the fee bills were served.

(2842) SECT. 18. Nothing in the two preceding sections shall be construed to prevent the clerk from instituting suit on such bond, for the recovery of the costs and charges.

(2843) SECT. 19. No person shall take or remove any fugitive from this State, or do any act toward such removal, unless authorized to do so pursuant to the provisions of this act; and any person violating the provisions of this section shall forfeit and pay to the aggrieved party a sum not less than five hundred dollars.

(2844) SECT. 20. Whenever any person shall have been committed to the jail of any county, upon examination for a bailable offence, under the provisions of this act, he may be let to bail with sufficient surety for his appearance at the next term of the court of the county having criminal jurisdiction, such bail to be taken and approved by the court, or judge of the court, having criminal jurisdiction, or the probate judge.

[Compiled Laws of Kansas (Dassler), 1885, chap. 44, pp. 460-462.]

## RELATING TO FUGITIVES FROM JUSTICE.

An Act relating to fugitives from justice, and repealing section 5, chapter 44, General Statutes 1868.

*Be it enacted by the Legislature of the State of Kansas.*

SECTION 1. The Governor of this State may, on application, appoint an agent to demand of the executive authority of any other State or Territory any offender fleeing from the justice of this State: *Provided*, That such application is accompanied by sworn evidence that the party charged is a fugitive from justice, and that the application is made in good faith for the punishment of crime, and not for the purpose of collecting a debt, or pecuniary mulct, or of recovering the alleged fugitive to a foreign jurisdiction, with a view there to serve him with civil process; and also by a duly-attested copy of an indictment, or a duly-attested copy of a complaint or information made before a court or magistrate authorized to take the same, such complaint or information to be accompanied by an affidavit to the facts constituting the offence charged, by a person or persons having actual knowledge thereof, and such further evidence in support thereof as the Governor may require.

SECT. 2. Before the Governor of this State shall demand any fugitive from justice from the executive authority of any other State or Territory, the county attorney of the county wherein the alleged crime is said to have been committed shall examine into the case, and if satisfied that a crime has been committed, and that the person charged is the guilty person, he shall so certify to the Governor, with a certified copy of the affidavit, information or indictment presented, and ask a requisition to be made in accordance therewith.

SECT. 3. Applications for requisitions on the executive authority of any other State or Territory for the surrender of fugitives from the justice of this State shall be made to conform to such rules and regulations as may be adopted and promulgated by the executive authority of this State.

SECT. 4. The Governor of this State, in any case authorized by the Constitution of the United States and the acts of Congress made in pursuance thereof, may on demand deliver over to the executive authority of any other State or Territory any person

charged therein with treason, felony, or other crime committed therein: *Provided*, That such demand or application is accompanied by a duly-attested copy of an indictment, or a duly-attested copy of a complaint or information, certified as authentic, and also by sworn evidence that the demand is made in good faith for the punishment of crime, and not for the purpose of collecting a debt, or pecuniary mulct, or of removing the alleged fugitive to a foreign jurisdiction, with a view there to serve him or her with civil process.

SECT. 5. The sheriff, or other officer to whom shall be intrusted the execution of a warrant issued by the Governor of this State, shall proceed forthwith to arrest the fugitive therein named, and on payment of all costs by the duly-authorized agent of the executive authority making the demand, such fugitive shall be delivered to him, to be thence removed to the proper place for prosecution: *Provided*, That if the agent of the executive authority, as aforesaid, does not appear within thirty days from the date of the arrest so made, the sheriff shall discharge the person so imprisoned; and all costs and expenses, being first ascertained to the satisfaction of the executive, shall on his certificate be allowed and paid out of the State treasury.

SECT. 6. Section five, chapter forty-four, of the general statutes of eighteen hundred and sixty-eight, an act relating to fugitives from justice, and all acts or parts of acts in conflict herewith, are hereby repealed.

SECT. 7. This act to be in force from and after its publication in the statute book.

Approved February 18, 1886.

I hereby certify that the foregoing is a true and correct copy of the original enrolled bill now on file in my office.

E. B. ALLEN, *Secretary of State*.

[This act appears to take the place of the first five sections of chapter 44,  
Compiled Laws.]

## APPLICATION FOR REQUISITION.

(TO BE MADE IN DUPLICATE.)<sup>1</sup>\_\_\_\_\_, *Governor of the State of Kansas.*

I RESPECTFULLY ask that you issue a requisition on the Governor of \_\_\_\_\_ for the apprehension and rendition of \_\_\_\_\_, who stands charged by<sup>2</sup> \_\_\_\_\_ pending in the \_\_\_\_\_ court, within and for the County of \_\_\_\_\_, with the crime of \_\_\_\_\_, committed in \_\_\_\_\_ County, but who has, since the commission of said offence, and before an arrest could be made upon process issued by said court, and with a view of avoiding the same, fled from justice of the State of Kansas, and is now, as your petitioner verily believes, in the County of \_\_\_\_\_ and State of \_\_\_\_\_, and the grounds for such belief are as follows:

The ends of justice, in my opinion, require that he be brought back to this State for trial. I herewith present a duly certified copy of the original<sup>2</sup> \_\_\_\_\_, now on file in the office of \_\_\_\_\_ in said county.

In my opinion the fact \_\_\_\_\_ stated in said<sup>2</sup> \_\_\_\_\_ true, and I believe that the prosecution of said \_\_\_\_\_ would result in his conviction of the crime charged. I nominate \_\_\_\_\_, of \_\_\_\_\_ County, as a proper person to be appointed and commissioned by you as the agent of the State of Kansas to receive the said fugitive when he shall be apprehended, and bring him to this State, and deliver him into the custody of the sheriff of said County. I also certify that \_\_\_\_\_ has no private interest in the proposed arrest.

I further certify that I have examined into the case and am satisfied that a crime has been committed, and that the person charged is the guilty person.

\_\_\_\_\_,  
County Attorney of \_\_\_\_\_ County.

Dated at \_\_\_\_\_, \_\_\_\_\_, A. D. 189 .

<sup>1</sup> For Ohio, the application should be made in triplicate.

<sup>2</sup> Here insert "Complaint," "Information," or "Indictment," as the case may be.

The State of Kansas,

County, ss.

The affiant, being duly sworn, deposes and says that the said , charged with the crime of , is a fugitive from justice, and that the application is made in good faith for the punishment of crime, and not for the purpose of collecting a debt, or pecuniary mulct, or of recovering the alleged fugitive to a foreign jurisdiction with a view to there serve him with civil process, and that this affiant has actual knowledge of the facts constituting the offence, which are as follows:

\_\_\_\_\_.

Subscribed and sworn to by , before me,  
this day of , A. D. 189 .

\_\_\_\_\_.

## FORMS.

### [No. 1. — Requisition.]

*The State of Kansas to his Excellency the Governor of the State of*

WHEREAS, it appears from the annexed and papers which I hereby certify to be authentic, and duly authenticated according to the laws of the State of Kansas, that stand charged by with the crime of , committed in the County of in this State, and it has been represented to me that fled from justice of this State, and taken refuge within the limits of the State of ;

Now therefore, I, \_\_\_\_\_, Governor of the State of Kansas, pursuant to the provisions of the Constitution and laws of the United States in such cases made and provided, do hereby make requisition for the apprehension of said , and for delivery to , who is authorized to receive and convey to the State of Kansas, there to be dealt with according to law.

In testimony whereof I have hereunto set my hand and caused to be affixed the Great Seal of the State of Kansas. Done at the city of

\_\_\_\_\_

\_\_\_\_\_

[No. 2. — *Agent's Warrant.*]

STATE OF KANSAS.

These are, therefore, to request and require all persons to permit the said \_\_\_\_\_, agent as aforesaid, to receive and secure the said \_\_\_\_\_, and bring \_\_\_\_\_, unmolested, into this State, having jurisdiction of said crime; and to render all lawful and necessary assistance in the premises, he, the said agent, peaceably and lawfully behaving. No expenses will be paid by this State.



In testimony whereof, I have hereunto subscribed my name, and affixed the Great Seal of the State of Kansas. Done at Topeka, this                      day of                      , A. D. 189   .

By the Governor,

\_\_\_\_\_,  
Secretary of State.

\_\_\_\_\_,  
Asst. Secretary of State.

## KENTUCKY.

### CHAPTER XLV.

#### FUGITIVES FROM JUSTICE.

##### *Article I. — Fugitives from Justice, how dealt with.*

1. Upon the demand of the executive of any State or Territory of the United States, made upon the Governor of this Commonwealth to surrender a fugitive from justice from said State or Territory, pursuant to the Constitution and laws of the United States, he shall issue his warrant to the sheriff or constable of any county within this Commonwealth, commanding him to apprehend said fugitive and bring him before some circuit judge.

2. The circuit judge shall proceed, by the examination of witnesses, to ascertain if the person apprehended be the fugitive demanded and mentioned in the warrant of the Governor of this State, and, if satisfied of the identity of the person, the judge shall order him to be delivered up to the agent of the State or Territory demanding him, to be transported to such State or Territory agreeably to the laws of the United States; otherwise, he shall discharge the person from custody.

3. If no such agent be present, the fugitive shall be committed to the jail of the county in which the hearing before the judge is had. Of the fact of commitment the judge shall forthwith inform the Governor of this State, and, on demand by the agent of the



State or Territory upon the jailer, by the authority of the Governor of this Commonwealth, the fugitive from justice shall be delivered up to such agent. If said fugitive be not demanded within three months after his commitment, the jailer shall discharge him.

4. All costs incurred in apprehending and securing said fugitive shall be paid by the agent of the State or Territory, before he shall be permitted to remove him or receive him into custody.

*Article II. — Arrest of Persons for Offences committed in Another State or Territory.*

1. A person guilty of felony anywhere in the United States, if found in this State, may be arrested and confined in jail, and delivered over to the proper authority, in the following manner: (1) A warrant issued by any judicial authority, upon affidavit made of the facts, shall authorize his arrest by any ministerial officer, or other person, to whom it may be directed by name. (2) The person arresting the accused shall immediately take him before the circuit judge, the judge of the county court, or the police judge of a city, in the county in which he was arrested, who shall, upon hearing the evidence, if satisfied of the guilt of the prisoner, commit him to the jail of the county where he was arrested, there to remain sixty days, unless he be legally discharged, or removed upon the demand of the executive of the State or Territory in which it is charged that the offence was committed.

2. It shall be the duty of the person who caused the arrest of such fugitive to be made, to notify the executive of the State or Territory in which the crime was committed.

3. The Governor of this Commonwealth, upon a proper demand made, shall issue his warrant directing the officer having the custody of the prisoner to deliver him to the agent of the State or Territory demanding him, whose duty it shall be to deliver over such prisoner, upon the payment of all legal costs and charges by said agent or other person.

4. Whenever the Governor of this Commonwealth shall issue his proclamation, offering a reward for a fugitive from justice, or any one charged with crime, he may order the same published in a newspaper or not, as he shall deem proper under the circumstances and to the interests of the Commonwealth; and if he shall order the same so published, he shall designate the paper or papers in

which the publication shall be made, and the number of times it shall be inserted. The account for such publication, with the approval of the Governor indorsed thereon, shall be paid out of the public treasury.

5. In all cases where the Governor of this Commonwealth shall make a requisition upon the Governor of any other State or a Territory for a fugitive from justice, the person named in such requisition as the agent of this Commonwealth shall, unless a different condition is contained in the commission of the agent, be allowed to receive, as a compensation for his services, at the rate of twelve and a half cents per mile for the distance he may travel to and from the county seat of the county having jurisdiction of the offence of which said fugitive stands charged, to the place where said fugitive may be arrested, — the distance to be computed by the route most usually travelled, — and such other fees and necessary expenses as he may have to expend in reclaiming and transporting such fugitive.

6. The claims provided for in this chapter to be allowed by the Governor, and for the amount of which the auditor will draw his warrant upon the treasurer.

[General Statutes of Kentucky, 1878, pp. 492-494.]

## REQUISITIONS.

### COMMONWEALTH OF KENTUCKY.

OFFICE OF SECRETARY OF STATE,  
FRANKFORT, , 188 .

SIR, — In the matter of obtaining requisitions for fugitives from justice, the following executive regulations are printed for the information of all concerned : —

1. It is not deemed proper that the State should incur the expense incident to the arrest and return of a fugitive from its jurisdiction when such fugitive, by reason of the death or removal of important witnesses, or from any other cause, probably would not be convicted even if brought to trial. The Commonwealth's attorney of the district and the county attorney of the county in which a fugitive stands accused are supposed to know better than any individual citizen when

the ends of justice require the arrest and rendition of such fugitive. Therefore, requisitions will be issued only upon the application of one of the officers above named, or, in their absence from the county, upon the application of the county judge, who, in such case, must state in his application that both of the officers first named are absent from the county. The officer who makes application for a requisition must state the name of the person accused, the crime with which he stands charged, and the court in which the accusation is pending; that the accused is a fugitive from justice, and his information, if any, as to the present whereabouts of such accused person; that he is familiar with the facts in the case, and believes that, in the event of a trial, the accused will be convicted of the crime with which he stands charged; that he thinks the ends of justice require that the said fugitive be brought back to this State for trial, and that his application for a requisition is made in good faith for the punishment of crime, and not for the purpose of collecting a debt or pecuniary mulct, nor for the purpose of removing the accused to a foreign jurisdiction, with a view there to serve him with civil process, or for the promotion of any private end whatever.

The officer making the application must recommend some suitable person to be appointed and commissioned as agent to receive the fugitive and give him safe conduct to the county in which he stands accused. He must sign the application in his official capacity, and, as the governors of some of the States and Territories refuse to honor a requisition unless accompanied by an affidavit to the effect indicated above, he must swear to it before some one authorized to administer oaths. Blank forms for making application will be furnished to Commonwealth's attorneys, county attorneys, or county judges, by this office when requested to do so.

2. The application for a requisition must be accompanied by two certified copies of the accusation against the accused. The laws of this State provide for two modes of accusation: one an indictment found, and the other an affidavit made before and filed in the office of the county judge, a justice of the peace, or some other magistrate, which latter mode is resorted to only when arrest is deemed necessary before an indictment can be found. When the accusation is in the form of an affidavit, such affidavit must set forth distinctly the facts which constitute the crime. It is not sufficient for the affidavit to state, in general terms, that the person accused has committed a

given crime ; this would be the statement of a conclusion rather than a statement of the facts which constitute the crime. Nor is it sufficient in such affidavit to express a belief that the allegations therein contained are true ; it must state facts or circumstances such as would be sufficient, in the absence of other testimony, to warrant a finding against the accused. Again, the mere making of the necessary affidavit without filing it in the office of some magistrate does not constitute a legal accusation. Such affidavit, as before stated, must be made before some magistrate authorized to issue a warrant for the arrest of the accused, and must be filed in his office, and when so filed it becomes a part of the records thereof, and cannot be taken therefrom. Therefore, whether the accusation be in the form of an indictment or in the form of an affidavit, the application must be accompanied, not by the original accusation itself, but by two copies thereof, certified as such by the officer in whose office it is filed ; and it is not sufficient for him merely to attest such copies, but he should certify at length that they are true and exact copies of the original on file in his office. If, however, the fugitive has been convicted and has afterwards made his escape, then, in that event, the application for a requisition must be accompanied by two certified copies of the judgment or sentence of the court.

3. The fees for issuing a requisition and commission to agent, which must always accompany the application, amount to eight dollars, and are paid by the agent named in such requisition and refunded to him by the State as a part of his legitimate expenses, provided he gets the person accused and delivers him to the jailer of the county in which he stands charged. For compensation to agents in such cases, see section 5, article 2, chapter 45 of the General Statutes, as amended by act of the Legislature approved May 1, 1880.

4. The application for a requisition, and all papers accompanying it, must be in duplicate ; one copy of which will be retained by the Governor and the other transmitted with the requisition when issued. The signatures of all officers attached to any paper intended to be used in connection with an application for a requisition, must be signed by such officers in their official capacity, and it is not sufficient for them merely to attach to their signatures certain letters to indicate their official character, but they should always attach their official designation in words at length. This

last suggestion is very important, and officers making application for requisitions are requested to see to it that all papers accompanying such application are technically correct in every respect, as much trouble and inconvenience will be saved thereby to all concerned.

By direction of the Governor,

\_\_\_\_\_,  
Secretary of State.

### APPLICATION FOR REQUISITION.

(TO BE SENT IN DUPLICATE.)

*To the Governor of Kentucky.*

I WOULD represent that \_\_\_\_\_ stands charged by <sup>1</sup> \_\_\_\_\_, pending in the <sup>2</sup> \_\_\_\_\_, within and for the County of \_\_\_\_\_ and State of Kentucky, with the crime of \_\_\_\_\_, committed in the County of \_\_\_\_\_, as will more fully appear by reference to two certified copies of said \_\_\_\_\_, herewith inclosed. The said \_\_\_\_\_ is a fugitive from justice, and I have reliable information which induces me to believe that he is now in the County of <sup>3</sup> \_\_\_\_\_ in the State of \_\_\_\_\_. I am familiar with the facts in said case, and verily believe that, in the event of a trial, the accused will be convicted of the crime with which he stands charged. Believing that the ends of justice require that said \_\_\_\_\_ be brought back to this State for trial, I respectfully request that you issue a requisition upon the Governor of the State of \_\_\_\_\_ for his arrest and rendition, and to that end I recommend \_\_\_\_\_ as a suitable person to be appointed and commissioned as agent on the part of the State of Kentucky to receive said \_\_\_\_\_, and give him safe conduct to the County of \_\_\_\_\_, in which he stands accused. I make this application in good faith for the punishment of crime, and not for the purpose of collecting a debt or pecuniary mulct, nor for the

<sup>1</sup> Here state whether by indictment, affidavit, or conviction, as the case may be.

<sup>2</sup> Here state whether pending in the court of a certain justice of the peace, of the county judge, the circuit or criminal court, as the case may be.

<sup>3</sup> Here give name of county if known, otherwise leave county blank.

purpose of removing the said \_\_\_\_\_ to a foreign jurisdiction, with a view there to serve him with civil process, or for the promotion of any private end whatever.<sup>1</sup>

Subscribed and sworn to before me by \_\_\_\_\_, this  
day of \_\_\_\_\_, 189 .

## FORMS.

[No. 1. — *Requisition.*]

IN THE NAME AND BY THE AUTHORITY OF THE  
COMMONWEALTH OF KENTUCKY.

\_\_\_\_\_, Governor of said Commonwealth, to all to whom  
these presents shall come, greeting.

To his Excellency, the Governor of the State of \_\_\_\_\_.

WHEREAS, \_\_\_\_\_ stands charged by \_\_\_\_\_, with the  
crime of \_\_\_\_\_, committed in the County of \_\_\_\_\_, and  
information has been received at the Executive Department of this  
State that the said \_\_\_\_\_, ha fled from justice, and  
now going at large in the State of \_\_\_\_\_, and it being im-  
portant and highly necessary for the good of society that the perpe-  
trators of such offences should be brought to justice ;

Now, therefore, I, \_\_\_\_\_, Governor of the Common-  
wealth of Kentucky, by virtue of the authority vested in me by the  
Constitution and laws of the United States, do hereby demand the  
said \_\_\_\_\_ fugitive from the justice of the laws of this  
State, and make known to your Excellency that I have appointed  
\_\_\_\_\_, my agent to receive said fugitive and bring  
to this State, having jurisdiction of the said offence, that  
may abide \_\_\_\_\_ trial for the crime for which \_\_\_\_\_ stands  
charged. I herewith annex and submit to your Excellency a copy  
of the \_\_\_\_\_ upon which the demand is founded, which I cer-  
tify to be authentic.

<sup>1</sup> If county judge make application, he must here state that Commonwealth's  
attorney and county attorney are both absent from the county.

In testimony whereof, I have hereunto set my hand and caused the seal of the Commonwealth to be affixed, at Frankfort, the  
                     day of                     , in the year of our Lord one  
 thousand eight hundred and                     , and in the ninety-  
                     year of the Commonwealth.

By the Governor,

\_\_\_\_\_,  
*Secretary of State.*

\_\_\_\_\_,  
*Assistant Secretary.*

[*No. 2 — Agent's Warrant.*]

IN THE NAME AND BY THE AUTHORITY OF THE  
 COMMONWEALTH OF KENTUCKY.

\_\_\_\_\_, *Governor of said Commonwealth, to all to whom  
 these presents shall come, greeting.*

Know ye, that reposing especial trust and confidence in the integrity, diligence, and ability of \_\_\_\_\_, I do hereby appoint him agent, on the part of the State, to proceed to the \_\_\_\_\_, for the purpose of demanding and receiving from the proper authorities of said \_\_\_\_\_, fugitive from justice from the State of Kentucky charged with \_\_\_\_\_, and I do hereby authorize and direct the said \_\_\_\_\_, to demand and receive the said fugitive, bring \_\_\_\_\_ to this State, and deliver \_\_\_\_\_ to the custody of the \_\_\_\_\_, of the County of \_\_\_\_\_.

In testimony whereof, I have caused these letters to be made patent, and the seal of the Commonwealth to be hereunto affixed.

Done at Frankfort, the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and ninety-\_\_\_\_\_, and in the ninety-\_\_\_\_\_ year of the Commonwealth.

By the Governor,

\_\_\_\_\_,  
*Secretary of State.*

\_\_\_\_\_,  
*Assistant Secretary.*

[No. 3.—*Rendition Warrant.*]

## COMMONWEALTH OF KENTUCKY.

## EXECUTIVE DEPARTMENT.

\_\_\_\_\_, Governor, the Commonwealth of Kentucky,  
to the Sheriffs and Constables thereof, greeting.

WHEREAS, It has been made known to the undersigned, Governor of said Commonwealth, by his Excellency, \_\_\_\_\_, Governor of the State of \_\_\_\_\_, that \_\_\_\_\_ of said State, stands charged, by \_\_\_\_\_, with the crime of \_\_\_\_\_, committed in the County of \_\_\_\_\_, in said State, a copy of which said \_\_\_\_\_, duly authenticated, is now on file in this department; and that the said \_\_\_\_\_ has fled from the said State of \_\_\_\_\_, thereby evading the justice of its laws, and is going at large within the limits of the State of Kentucky; and the said Governor of said State of \_\_\_\_\_, having demanded said fugitive in pursuance of the provisions of the Constitution and laws of the United States;

Know ye, therefore, that you are hereby commanded to apprehend and arrest the said \_\_\_\_\_, and bring \_\_\_\_\_ before some circuit judge of this Commonwealth, that the said circuit judge may proceed, by proper and legal testimony, to inquire into the matter, so far as shall be necessary, to ascertain the identity of the said \_\_\_\_\_; and if \_\_\_\_\_ be the person mentioned in this warrant, that the said judge may order \_\_\_\_\_ to be delivered up to \_\_\_\_\_, who has been duly authorized by the Governor of the State of \_\_\_\_\_, to receive and convey the said \_\_\_\_\_ to the State of \_\_\_\_\_, to be dealt with according to law. And in case the said \_\_\_\_\_ should not appear to receive \_\_\_\_\_, that the judge may commit \_\_\_\_\_, the said \_\_\_\_\_, to jail, on the charge aforesaid, to be dealt with according to law; and that you report forthwith to the Governor of this Commonwealth your proceedings under his warrant. And furthermore, that if the said \_\_\_\_\_ shall be committed to the jail of any county in this State, that the judge so committing may immediately inform the Governor of this Commonwealth of the commitment thereof, and to what jail \_\_\_\_\_ been committed.



In testimony whereof, I, ———, Governor of the Commonwealth of Kentucky aforesaid, have hereunto set my hand, and caused the Seal of the Commonwealth to be affixed at Frankfort, the            day of           , in the year of our Lord one thousand eight hundred and ninety-           , and in the ninety- year of the Commonwealth.

By the Governor,

———,

*Secretary of State.*

By ———,

*Assistant Secretary of State.*

## LOUISIANA.

SECTION 1038. When any person shall be charged on oath of any credible person, before any judge or justice of the peace of this State, with having committed any crime within any State or Territory of the United States, and has fled from justice, it shall be the duty of such judge or justice to issue his warrant for the arrest of such accused, and to proceed to the examination of such case, and commit or discharge the accused, as such judge or justice may determine, provided no person so accused shall be detained in custody exceeding ninety days.

SECT. 1039. The Governor may in his discretion deliver over to justice any person found within the State, who shall be charged with having committed any crime under the Constitution and laws of the United States, or of any State or Territory.

SECT. 1040. Such delivery shall only be made on the requisition of the duly authorized ministers or officers of the government within the jurisdiction of which the crime shall be charged to have been committed, and upon their paying all expenses attending the apprehension, confinement, and delivery of the party accused.

SECT. 1041. It shall be the duty of the Governor to require such evidence of the guilt of the person so charged, as would be necessary to justify his apprehension and commitment for trial, had the crime charged been committed within the State.

[Revised Statutes of Louisiana (1870)].



STATE OF LOUISIANA, }  
 Parish of . }

I, , being duly sworn on my oath say that the allegation and averments in the foregoing application are true.

Sworn to and subscribed before me }  
 this day of , 189 . }

In my opinion it would be proper for your Excellency to issue the requisition asked.

\_\_\_\_\_,  
*District Attorney* *Judicial District.*

NOTE. — Where requisition is made in the State of Ohio, all papers must be made in triplicate, changes must be made in the application to correspond with the facts of each particular case. The word "indictment" being dropped and the words "Information" or "Affidavit" or "Sentence" substituted, and the title of the court properly changed if necessary.

## FORMS.

[No. 1. — *Requisition.*]

STATE OF LOUISIANA.

EXECUTIVE DEPARTMENT.

*By* \_\_\_\_\_, *Governor of the State of Louisiana, in the name and by the authority of the State of Louisiana, to his Excellency,* \_\_\_\_\_, *Governor of the State of* \_\_\_\_\_.

WHEREAS, \_\_\_\_\_, stand charged in the Parish of \_\_\_\_\_, in this State, with the crime of \_\_\_\_\_, and whereas, information has been received at the Executive Department of this State that the said \_\_\_\_\_ ha fled from justice, and \_\_\_\_\_ now in the State of \_\_\_\_\_, and being important and highly necessary for the good of society the perpetrator of such offence should be brought to justice;

Now, therefore, by virtue of the authority vested in me by the Constitution of the United States of America, and the laws made

in pursuance thereof, I do, by these presents, demand the surrender of said \_\_\_\_\_, as fugitive from justice from this State, and make known to your Excellency that I have appointed my agent, to receive said fugitive and bring \_\_\_\_\_ to this State, having jurisdiction of said offence, that \_\_\_\_\_ may abide \_\_\_\_\_ trial for the crime for which \_\_\_\_\_ stand charged. In compliance with said requisition I herewith annex and submit to your Excellency the \_\_\_\_\_ upon which the demand is founded, which I certify to be authentic.

In testimony whereof, I have hereunto affixed my signature and caused the Seal of the State of Louisiana to be attached thereto, at the city of Baton Rouge, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and \_\_\_\_\_.

By the Governor,

\_\_\_\_\_,  
Secretary of State.

[No. 2. — *Certificate of Authentication.*]

STATE OF LOUISIANA.

I, the undersigned Secretary of State of the State of Louisiana, do hereby certify that \_\_\_\_\_, whose name is subscribed to the annexed instrument of writing, was, at the date of signing the same \_\_\_\_\_; having been duly \_\_\_\_\_, commissioned, qualified, and authorized to act in said capacity; that his signature to said instrument of writing is genuine and of his proper handwriting; that his attestation thereon is in due form and by the proper officer, and that full faith and credit are and ought to be given to all his official acts as such.

Given under my signature, authenticated with the impress of the Seal of the State of Louisiana, in the city of Baton Rouge, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 189 \_\_\_\_\_.

\_\_\_\_\_,  
Secretary of State.

[No. 3. — *Agent's Warrant.*]

STATE OF LOUISIANA.

EXECUTIVE DEPARTMENT.

*By ———, Governor of the State of Louisiana, in the name and by the authority of the State of Louisiana, To all to whom these presents shall come, greeting:*

WHEREAS, ———, stand charged in the Parish of ———, in this State, with the crime of ———, and it has been represented to me that ——— ha fled from justice and ha taken refuge in the State of ———;

And whereas, agreeable to the Constitution of the United States and an act of Congress passed February 12, 1793, I have made application to his Excellency the Governor of the State of ——— for the surrender of the said ———, fugitive from justice, and have also, in pursuance of the power vested in me by law, appointed ———, agent, on the part of the State of Louisiana, for the purpose of receiving the said ———, from the constituted authorities of the said State of ———, whenever ——— shall have been surrendered in accordance with such application, and bringing ——— into this State to be dealt with according to law;

These are, therefore, to request and require all persons to permit the said ———, agent, as aforesaid, to execute the trust herein imposed on ———, and to render all lawful necessary assistance in the premises.

(This State will not be responsible for any expense attending the execution of the requisition for the arrest and delivery of fugitives from justice.)

In testimony whereof, I have hereunto affixed my signature and caused the Seal of the State of Louisiana to be attached thereto, at the city of Baton Rouge, this ——— day of ———, in the year of our Lord one thousand eight hundred and ———.

By the Governor,

—————,

*Secretary of State.*

[No. 4.—*Rendition Warrant.*]

## STATE OF LOUISIANA.

## EXECUTIVE DEPARTMENT.

*By ——— ———, Governor of the State of Louisiana, in the name and by the authority of the State of Louisiana. To all to whom these presents shall come, greeting.*

UPON the production to me of a lawful *requisition* to that effect from his Excellency, ———, Governor of the State of ———, and also upon the production of the requisite evidence to justify the same, and which is on file in the office of the Secretary of State, I do hereby authorize and direct the sheriff or any lawful officer of any of the parishes in the State of Louisiana, within whose limits ———, who stand charged with the crime of ———, in the County of ———, State of ———, fugitive from justice of the said State of ———, for whom a requisition has been issued, may be found, to apprehend the said ——— and deliver ——— into the custody of ———, the duly constituted agent ———, on the part of the said State of ———, upon said agent paying all the expenses attending the apprehension, confinement, and delivery of said fugitive.

In testimony whereof, I have hereunto affixed my signature and caused the Seal of the State of Louisiana to be attached thereto at the city of Baton Rouge, this ——— day of ———, in the year of our Lord one thousand eight hundred and ———.

By the Governor,

———,

*Secretary of State.*

SEAL.

## MAINE.

**SECTION 8.** In any case, authorized by the Constitution and laws of the United States, the Governor may appoint an agent to demand and receive of the executive authority of any other State, any fugitive from justice charged with any crime in this State; and the accounts of such agent shall be audited and paid from the treasury by order of the Governor and council.

**SECT. 9.** Whenever a prisoner convicted of, or charged with, a capital crime or other high offence escapes from prison in this State, &c., [the Governor may offer a reward.]

**SECT. 10.** When such demand as is mentioned in section 8 is made on the Governor of this State, and he is satisfied, on examination of the grounds thereof, that it is according to law and ought to be granted, he shall issue his warrant, under the seal of the State, authorizing the agent making the demand, at his own expense, to take and transport such fugitive to the line of the State at the time designated in the warrant, and shall therein require the civil officers of the State to afford all needful aid in its execution.

**SECT. 11.** When such fugitive from justice in another State is found in this State, any court or magistrate authorized to issue warrants in criminal cases may, on complaint under oath, setting forth the offence and other facts necessary to bring the case within the provisions of law, grant a warrant and have the accused arrested for examination as in other cases.

**SECT. 12.** On such examination, if the court or magistrate believes that the complaint is true, and that the accused can lawfully be demanded of the Governor, the case shall be adjourned long enough to obtain an executive warrant; and if the offence is bailable, the accused may recognize with sufficient sureties to appear at the adjournment; and if he does not so recognize, or the offence is not bailable, he shall be committed; and if any such recognizance is forfeited, the same proceedings shall be had as in case of other recognizances.

**SECT. 13.** If the accused appears at the adjournment, he shall be discharged, unless some person is authorized to receive him by an executive warrant, or another adjournment is ordered for sufficient cause, and in that case the same proceedings shall be had as

at the first adjournment ; but nothing in this, or the two preceding sections shall prevent the arrest of any accused by an executive warrant, and such arrest discharges any such existing recognizance.

SECT. 14. The complainant is answerable in all such cases for the actual costs and charges and the support in prison of the accused when committed, to be paid as a creditor pays for his debtor committed on execution ; and if his support in prison is not so paid, the jailer may discharge the accused as if he were committed on execution for debt. (See chap. 113, § 72.)<sup>1</sup>

[Revised Statutes of Maine, 1883, chap. 138, pp. 957, 958.]

The rules adopted at the Interstate Conference, 1887, are in force in Maine. These rules are printed in the beginning of this appendix.

## FORMS.

[No. 1. — *Requisition.*]

### STATE OF MAINE.

*The Governor of the State of Maine, to the Governor of the*  
*of*

WHEREAS, it appears by \_\_\_\_\_ which \_\_\_\_\_ hereunto annexed, and which I certify to be authentic and duly authenticated in accordance with the laws of this State, that

\_\_\_\_\_ stand charged with the crime of \_\_\_\_\_, which I certify to be \_\_\_\_\_ crime under the laws of this State, committed in the County of \_\_\_\_\_, in this State ; and it having been represented to me that he has fled from the justice of this State, and may have taken refuge in the \_\_\_\_\_ ;

Now, therefore, pursuant to the provisions of the Constitution and the laws of the United States in such case made and provided, I do hereby require that the said \_\_\_\_\_ be apprehended and delivered to \_\_\_\_\_, who

<sup>1</sup> Sects. 8, 10, 11, 12, 13, and 14 are reproduced from Sects. 4, 6, 7, 8, 9, and 10, respectively, of chap. 138, Revision of 1871. Sect. 9 is derived from Acts of 1876, chap. 80.



hereby authorized to receive and convey \_\_\_\_\_ to the State of Maine, there to be dealt with according to law.

In witness whereof, I have hereunto signed my name and caused the Seal of the State to be affixed, at the Capitol, in Augusta, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and ninety \_\_\_\_\_.

By his Excellency the Governor,

\_\_\_\_\_,  
Secretary of State.

[No. 2. — *Agent's Warrant.*]

STATE OF MAINE.

*The Governor of the State of Maine, to all to whom these presents shall come.*

Know ye, that I have authorized and empowered, and by these presents do authorize and empower \_\_\_\_\_, to take and receive from the proper authorities of the \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_, fugitive from justice, and convey \_\_\_\_\_ to the State of Maine, there to be dealt with according to law.

In witness whereof, I have hereunto signed my name and caused the Seal of the State to be affixed, at the Capitol, in Augusta, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and \_\_\_\_\_.

By the Governor,

\_\_\_\_\_,  
Secretary of State.

The agent acting under this authority must make return, with his doings thereon, to the Secretary of the State within thirty days.

I, \_\_\_\_\_, do hereby certify that I have this \_\_\_\_\_ day of \_\_\_\_\_, 189\_\_\_\_, honored the requisition of the Governor of the State of Maine for the surrender of \_\_\_\_\_, fugitive from the justice of the said last named State of Maine, and have issued a warrant for \_\_\_\_\_ delivery to \_\_\_\_\_,

agent of said State of Maine, whose authority to receive said fugitive is annexed hereto.

In witness whereof, I have hereunto signed my name and affixed the Seal of the \_\_\_\_\_, at the Capitol, in \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and \_\_\_\_\_.

By the Governor,  
\_\_\_\_\_.

[No. 3. — *Rendition Warrant.*]

STATE OF MAINE.

*The Governor of State of Maine, to \_\_\_\_\_, and the Sheriffs, Deputy-Sheriffs, Police, Constables, and other civil officers of and in the several cities, towns, and counties of this State.*

WHEREAS, it has been represented to me by the Governor of the \_\_\_\_\_ of \_\_\_\_\_, that \_\_\_\_\_ stand charged with the crime of \_\_\_\_\_, which he certifies to be crime under the laws of said \_\_\_\_\_, committed in the County of \_\_\_\_\_, in said \_\_\_\_\_, and that \_\_\_\_\_ ha fled from the justice of said \_\_\_\_\_ and ha taken refuge in this State, and the said Governor of the \_\_\_\_\_ of \_\_\_\_\_, having, in pursuance of the Constitution and laws of the United States, demanded of me that I shall cause the said \_\_\_\_\_ to be arrested and delivered to \_\_\_\_\_, who \_\_\_\_\_ duly authorized to receive \_\_\_\_\_ into his custody, and convey \_\_\_\_\_ back to the said \_\_\_\_\_ of \_\_\_\_\_;

And whereas, the said representation and demand is accompanied by \_\_\_\_\_, whereby the said \_\_\_\_\_ shown to have been duly charged with the said crime, and with having fled from said \_\_\_\_\_ of \_\_\_\_\_, and taken refuge in this State, which \_\_\_\_\_ duly certified by the said Governor of \_\_\_\_\_ to be authentic and duly authenticated;

Wherefore, you are required to arrest and secure the said \_\_\_\_\_, wherever \_\_\_\_\_ may be found within this State, and afford \_\_\_\_\_ such opportunity to sue out a writ of *habeas corpus* as is prescribed by the laws of this State, and to

thereafter deliver            into the custody of the said  
    , to be taken back to the said            of  
 from which            fled, pursuant to the said requisition; all of  
 which shall be without charge to this State; and also to return this  
 warrant and make return to the Secretary of State, within thirty  
 days from the date hereof, of all your proceedings had thereunder,  
 and of all facts and circumstances relating thereto.

In witness whereof, I have hereunto signed my name and caused  
 the Seal of the State to be affixed, this            day of            ,  
 in the year of our Lord one thousand eight hundred and            .

By the Governor.

\_\_\_\_\_,  
*Secretary of State.*

## MARYLAND.<sup>1</sup>

[Circular.] •

### STATE OF MARYLAND,

OFFICE OF THE SECRETARY OF STATE,  
 ANNAPOLIS,

18 .

To avoid the frequent irregularities and denials consequent from defects in applications to the Governor for *requisitions* for the surrender of fugitives from justice, the following rules which have been substantially promulgated and enforced by the preceding executive, will be strictly adhered to; and any application not complying with them in all respects will be rejected, without inquiry into its intrinsic merits.

The application must in all cases be made by the *State's Attorney*, and must state that the party complained of is a *fugitive* from *justice*, having fled from this State before arrest could be made, and that the ends of justice require that he should be brought back for trial.

If the application is made upon an indictment, a certified copy

<sup>1</sup> There is no State statute on Interstate Rendition.

thereof must be furnished by the clerk of the court in which it was found.

In cases where no indictment has been found, the affidavits charging the offence upon the accused must be in such express terms as to justify the belief that the Grand Jury, if in session, would be fully authorized to find a true bill; the justice of the peace taking the affidavits must certify that in his opinion the parties making them are entitled to full credit, and that they present a proper case for a requisition; and the official character of the justice must be duly attested by the certificate of the clerk of the court.

The State's Attorney must further certify that if the facts stated in the affidavits are true, they would in his opinion result in a conviction. He must also name the State (or District of Columbia) upon which the requisition is asked, and a *proper officer* be authorized as the agent of the State to take charge of the prisoner.

If the offence is not of recent occurrence, sufficient reasons must be given why the application has been delayed; and if a prior application has been made and refused, any new facts appearing in the papers must be specially pointed out.

In all cases of rejected applications the papers will be retained in this office, and if a requisition shall have been improperly or unadvisedly granted, there will be no hesitation in revoking it.

In all cases of *false pretences, embezzlement, conspiracy, and crimes of like character*, no requisition will be granted without a certified copy of the indictment accompanies the application, or unless the evidence exhibited clearly and unequivocally establishes the fact that the object is not to collect a private debt.

In executing a requisition the sheriff will be allowed a fair compensation for his services, and in no case will the expenses of an assistant be paid except where there are more prisoners than one, and then only when the necessity for assistance is made apparent. The amount allowed the officer will be \$3 per diem for the time necessarily employed, and the actual travelling expenses of himself and prisoner; and in all cases the bill of expenses shall set forth the items, and be verified by the affidavit of the officer.

The State's Attorney must state explicitly the locality where the fugitive is known to be, and in no case will a requisition be granted at the same time for the same offender, upon the Governor of more than a single State.

Duplicates of all papers necessary upon the application must be furnished, that one set may be retained in this department and the other attached to the requisition, though but one set need be certified.

\_\_\_\_\_,  
Secretary of State.

### APPLICATION FOR REQUISITION.

*To his Excellency, Governor of Maryland.*

SIR, — I hereby make application to your Excellency for the issue of a requisition upon the \_\_\_\_\_ for the delivery unto the sheriff of \_\_\_\_\_ County aforesaid, of a certain \_\_\_\_\_, who stands charged upon the annexed \_\_\_\_\_ with having on the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and ninety- \_\_\_\_\_,

I hereby further certify, that if the facts stated in the accompanying \_\_\_\_\_ be true, they would, in my opinion, lead to the conviction of the party accused. I further certify that since this offence was committed, and before the party could be arrested, he made his escape, and is now a fugitive from justice in the \_\_\_\_\_, where he \_\_\_\_\_. I request that an authority shall issue with the requisition hereby demanded, to \_\_\_\_\_, Esq., \_\_\_\_\_ as the agent of the State of Maryland, to receive the said prisoner, and to act in that regard as the laws justify, &c.

\_\_\_\_\_,  
State's Attorney for

### FORMS.

[No. 1. — *Requisition.*]

STATE OF MARYLAND.

EXECUTIVE DEPARTMENT.

*To his Excellency the Governor of* \_\_\_\_\_.

WHEREAS, it appears by \_\_\_\_\_ hereto annexed, and duly authenticated in accordance with the laws of this

State, that \_\_\_\_\_ stand charged with  
the crime of \_\_\_\_\_, committed in the County of \_\_\_\_\_  
in this State ;

And whereas it has been represented to me that the said \_\_\_\_\_  
\_\_\_\_\_ ha fled from justice, and ha  
taken refuge in the State of \_\_\_\_\_ ;

Now, therefore, pursuant to the provisions of the Constitution  
and laws of the United States, in such case made and provided,  
I, \_\_\_\_\_, Governor of the State of Maryland, do hereby  
request that the said \_\_\_\_\_ be apprehended  
and delivered to \_\_\_\_\_, who is hereby authorized to re-  
ceive and convey \_\_\_\_\_, the said \_\_\_\_\_, to the State of  
Maryland, there to be dealt with according to law.

Given under my hand and the Great Seal of the State of Mary-  
land. Done at the city of Annapolis, on this \_\_\_\_\_ day  
of \_\_\_\_\_ in the year of our Lord one thousand eight hundred  
and \_\_\_\_\_.

By the Governor,

\_\_\_\_\_,  
Secretary of State.

[No. 2. — *Requisition for Fugitive in District of Columbia.*]

## STATE OF MARYLAND.

### EXECUTIVE DEPARTMENT.

*To the Honorable \_\_\_\_\_, Chief Justice of the  
Supreme Court of the District of Columbia.*

WHEREAS, it appears by \_\_\_\_\_ hereto annexed, and  
duly authenticated in accordance with the laws of this State, that  
\_\_\_\_\_ stand charged with the crime of \_\_\_\_\_,  
committed in the County of \_\_\_\_\_ in this State ;

And whereas, it has been represented to me that the said \_\_\_\_\_  
\_\_\_\_\_ ha fled from justice, and ha taken  
refuge within the District of Columbia ;

Now, therefore, pursuant to the provisions of the Constitution  
and laws of the United States, in such case made and provided,  
I, \_\_\_\_\_, Governor of the State of Maryland, do hereby

request that the said \_\_\_\_\_ be apprehended and delivered to \_\_\_\_\_, who is hereby authorized to receive and convey \_\_\_\_\_, the said \_\_\_\_\_, to the State of Maryland, there to be dealt with according to law.

Given under my hand and the Great Seal of the State of Maryland. Done at the city of Annapolis, on this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and \_\_\_\_\_.

By the Governor,

\_\_\_\_\_,  
Secretary of State.

[No. 3. — *Affidavit to accompany Requisition.*]

STATE OF MARYLAND.

*County to wit:*

I HEREBY certify that on the \_\_\_\_\_ day of \_\_\_\_\_, personally appeared before me, the subscriber, a justice of the peace of the said State, in and for said \_\_\_\_\_, and made oath on the Holy Evangely of Almighty God, that on the \_\_\_\_\_ day of \_\_\_\_\_, a certain

\_\_\_\_\_ did feloniously and wilfully \_\_\_\_\_.  
And the aforesaid affiant further swears that he does not take this oath for the purpose of collecting any debt, but only and exclusively for the purpose of public justice; and further, that the said \_\_\_\_\_, before his arrest could be made, did flee and escape from the said State, and into \_\_\_\_\_, where he now is. And I further certify that the party making said foregoing affidavit is entitled to full credit; and that the facts sworn to, in my opinion, authorize the issue of a requisition. Witness my hand on the day and year aforesaid.

\_\_\_\_\_,  
Justice of the Peace.

STATE OF MARYLAND.

*County, Sct:*

I HEREBY certify, that \_\_\_\_\_ Esq., before whom the foregoing \_\_\_\_\_ appear to have

been made, and who has subscribed the same, was, at the date thereof, one of the justices of the peace of the State, in and for said county, duly elected, commissioned, and sworn, and that his signature thereto is genuine.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the circuit court for \_\_\_\_\_ County, this  
day of \_\_\_\_\_, 189 .

[*No. 4. — Agent's Warrant for Fugitive in District of Columbia.*]

OFFICE OF THE SECRETARY OF STATE,  
ANNAPOLIS, 18 .

To .

SIR, — A requisition has this day been issued, directed to the Honorable \_\_\_\_\_, Chief Justice of the Supreme Court of the District of Columbia, for the apprehension and delivery to you, as the agent of this State, of \_\_\_\_\_, who stand charged

with the crime of .

You are hereby instructed to execute the same without unnecessary delay, and make return of your proceedings under the same to this Department, as soon as practicable.

Given under my hand and the Seal of this office, on the day of \_\_\_\_\_, eighteen hundred and \_\_\_\_\_.

\_\_\_\_\_,  
Secretary of State.

[*No. 5. — Agent's Warrant.*]

OFFICE OF THE SECRETARY OF STATE,  
ANNAPOLIS, 18 .

To .

SIR, — A requisition has this day been issued on his Excellency, the Governor of \_\_\_\_\_ for the apprehension and delivery to you, as the agent of this State, of a certain \_\_\_\_\_ who stands charged \_\_\_\_\_ with the crime of .



You are hereby instructed to execute the same without unnecessary delay, and make return of your proceedings under the same to this Department as soon as practicable.

Given under my hand and the Seal of this office, on the  
day of \_\_\_\_\_, eighteen hundred and ninety-\_\_\_\_\_.

\_\_\_\_\_,  
*Secretary of State.*

[*No. 6. — Rendition Warrant.*]

STATE OF MARYLAND.

EXECUTIVE DEPARTMENT.

To \_\_\_\_\_, *Agent of the State of* \_\_\_\_\_.

WHEREAS demand has been made upon the Governor of the State of Maryland by his Excellency, \_\_\_\_\_, Governor of the State of \_\_\_\_\_, for the apprehension and delivery of \_\_\_\_\_, now alleged to be within the jurisdiction of this State, as a fugitive from the justice of the said State of \_\_\_\_\_, as defined by the Constitution and laws of the United States ;

And whereas such demand is accompanied by a copy of \_\_\_\_\_, charging such alleged fugitive with \_\_\_\_\_, a crime under the laws of the said State of \_\_\_\_\_, and the accompanying papers being certified as authentic by the Governor of the said State ;

Now, therefore, I, \_\_\_\_\_, Governor of the State of Maryland, do, by this my warrant, authorize and empower you, if such fugitive be not held in custody or under bail to answer any offence against the laws of the United States or of this State, forthwith to take and transport the said \_\_\_\_\_ to the line of this State, at your own expense. And I do hereby require all peace officers to whom this warrant may be shown to afford you all needful assistance in the execution hereof at your own cost and charge.

Given under my hand and the Great Seal of the State of Maryland.

Done at the city of Annapolis on this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and \_\_\_\_\_.

By the Governor,

\_\_\_\_\_,  
*Secretary of State.*

## MASSACHUSETTS.

SECTION 1. The Governor of this State, in any case authorized by the Constitution and laws of the United States, may, on demand, deliver over to the executive of any other State or Territory any person charged therein with treason, felony, or other crime; or may, on application, appoint an agent to demand of the executive authority of any other State or Territory any such offender fleeing from the justice of this State: *provided*, that such demand or application is accompanied by sworn evidence that the party charged is a fugitive from justice, and by a duly attested copy of an indictment, or of a complaint made before a court or magistrate authorized to receive the same; such complaint to be accompanied by affidavits to the facts constituting the offence charged, by persons having actual knowledge thereof, and such further evidence in support thereof as the Governor may require.

SECT. 2. When such demand or application is made, the Attorney-General or other prosecuting officer shall, if the Governor requires it, forthwith investigate the grounds thereof, and report to the Governor all the material facts which may come to his knowledge, with an abstract of the evidence in the case, and especially in case of a person demanded, whether he is held in custody or is under recognizance to answer for any offence against the laws of this State or of the United States, or by force of any civil process, with an opinion as to the legality or expediency of complying therewith.

SECT. 3. If the Governor is satisfied that the demand is conformable to law, and ought to be complied with, he shall issue his warrant, under the seal of the Commonwealth, to some officer authorized to serve warrants in criminal cases, directing him, at the expense of the agent making the demand, at a time designated in the warrant, to take and transport such person to the line of this State, and there deliver him over to such agent, and such officer may require aid as in criminal cases.

SECT. 4. No person arrested upon such warrant shall be delivered over to such agent of a State or Territory until he has been notified of the demand made for his surrender, and had opportunity to apply for a writ of *habeas corpus*, if he claims such right

of the officer making the arrest. And when such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the Attorney-General or other prosecuting officer for the district within which the arrest is made.

SECT. 5. An officer who delivers over to such agent for extradition a person in his custody upon such warrant, without having complied with the provisions of the preceding section, shall forfeit a sum not exceeding one thousand dollars.

SECT. 6. If the application for the arrest of a fugitive from the justice of the State is complied with, and an agent appointed, his account shall be audited and paid by the State.

SECT. 7. When a person is found in this State charged with an offence committed in another State or Territory, and liable by the Constitution and laws of the United States to be delivered over upon the demand of the executive of such other State or Territory, any court or magistrate authorized to issue warrants in criminal cases may, upon complaint under oath setting forth the offence and such other matters as are necessary to bring the case within the provisions of law, issue a warrant to bring the person charged before the same or some other court or magistrate within the State, to answer to such complaint as in other cases.

SECT. 8. If upon the examination of the person charged it appears to the court or magistrate that there is reasonable cause to believe that the complaint is true, and that such person may be lawfully demanded of the executive, he shall, if not charged with a capital crime, be required to recognize with sufficient sureties in a reasonable sum to appear before such court or magistrate at a future day (allowing a reasonable time to obtain the warrant of the executive), and to abide the order of the court or magistrate.

SECT. 9. If such person does not so recognize, he shall be committed to prison and there detained until such day, in like manner as if the offence charged had been committed within this State; and if the person recognizing fails to appear according to the condition of his recognizance, he shall be defaulted; and like proceedings shall be had as in case of other recognizances entered into before such court or magistrate. If the person is charged with a capital crime, he shall be committed to prison and there detained until the day so appointed for his appearance.

SECT. 10. If the person so recognized or committed appears before the court or magistrate upon the day ordered, he shall

be discharged, unless he is demanded by some person authorized by the warrant of the executive to receive him, or unless the court or magistrate sees cause to commit him, or to require him to recognize anew for his appearance on some other day, and if, when ordered, he does not so recognize, he shall be committed and detained as before: *provided*, that whether the person charged is recognized, committed, or discharged, any person authorized by the warrant of the executive may at all times take him into custody, and the same shall be a discharge of the recognizance, and not be deemed an escape.

SECT. 11. The complainant in such case shall be answerable for all actual costs and charges, and for the support in prison of any person so committed, to be paid in like manner as by a creditor for his debtor committed on execution. If the charge for support in prison is not so paid, the jailer may discharge such person in like manner as if he had been committed on an execution.

[General Statutes of Massachusetts, 1860, chap. 177, pp. 853-855. Also, Public Statutes of Massachusetts, 1882, chap. 177, secs. 1-11, pp. 1211-1213.]

An Act in relation to the fees and expenses of agents appointed by the Governor to demand of the authorities of other States offenders fleeing from justice.

*Be it enacted, etc., as follows: —*

SECTION 1. When an application for the arrest of a fugitive from the justice of this Commonwealth is complied with and an agent appointed under the provisions of chapter two hundred and eighteen of the Public Statutes, his account shall be allowed and paid, like other costs in criminal cases, by the county in which the proceedings are pending: *provided, however*, that the Governor in his discretion may direct the payment of the whole or any part of such account out of the treasury of the Commonwealth.

SECT. 2. Section six of chapter two hundred and eighteen of the Public Statutes is repealed.

SECT. 3. This act shall take effect upon its passage.

Approved June 3, 1886.

[Acts and Resolves of Massachusetts, 1886.]

## APPLICATIONS FOR REQUISITIONS.

## COMMONWEALTH OF MASSACHUSETTS.

## EXECUTIVE DEPARTMENT.

BOSTON,

189 .

SIR, — I am directed by his Excellency, the Governor, to ask your attention to the requirements embraced in the following regulations, which have his approval : —

Every application to the Governor for a requisition upon the executive authority of any other State or Territory, for the delivery up and return of any offender who has fled from the justice of this State, must be made by the district or prosecuting attorney for the county or district in which the offence was committed, and must be in duplicate original papers, or certified copies thereof.

The following must appear by the certificate of the district or prosecuting attorney : —

(a) The full name of the person for whom extradition is asked, together with the name of the agent proposed, to be properly spelled.

(b) That in his opinion the ends of public justice require that the alleged criminal be brought to this State for trial, at the public expense.

(c) That he believes he has sufficient evidence to secure the conviction of the fugitive.

(d) That the person named as agent is a proper person, and that he has no private interest in the arrest of the fugitive.

(e) If there has been any former application for a requisition for the same person, growing out of the same transaction, it must be so stated, with an explanation of the reasons for a second request, together with the date of such application, as near as may be.

(f) If the fugitive is known to be under either civil or criminal arrest in the State or Territory to which he is alleged to have fled, the fact of such arrest and the nature of the proceedings on which it is based must be stated.

(g) That the application is not made for the purpose of enforcing the collection of a debt, or for any private purpose whatever,

and that if the requisition applied for be granted, the criminal proceedings shall not be used for any of said objects.

(h) The nature of the crime charged, with a reference, when practicable, to the particular statute defining and punishing the same.

(i) If the offence charged is not of recent occurrence, a satisfactory reason must be given for the delay in making the application.

1. In all cases of fraud, false pretences, embezzlement, or forgery, when made a crime by the common law, or any penal code or statute, the affidavit of the principal complaining witness or informant that the application is made in good faith, for the sole purpose of punishing the accused, and that he does not desire or expect to use the prosecution for the purpose of collecting a debt, or for any private purpose, and will not directly or indirectly use the same for any of said purposes, shall be required, or a sufficient reason given for the absence of such affidavit.

2. Proof by affidavit of *facts and circumstances* satisfying the executive that the alleged criminal has fled from the justice of the State, and is in the State on whose executive the demand is requested to be made, must be given. The fact that the alleged criminal was in the State where the alleged crime was committed at the time of the commission thereof, and is found in the State upon which the requisition was made, shall be sufficient evidence, in the absence of other proof, that he is a fugitive from justice.

3. If an indictment has been found, certified copies, in duplicate, must accompany the application.

4. If an indictment has not been found by a grand jury, the *facts and circumstances* showing the commission of the crime charged, and that the accused perpetrated the same, must be shown by affidavits taken before a *magistrate* (a notary public is not a magistrate within the meaning of the statutes). It must also be shown that a complaint has been made, copies of which must accompany the requisition, such complaint to be accompanied by affidavits to the facts constituting the offence charged by persons having actual knowledge thereof, and that a warrant has been issued and duplicate certified copies of the same, together with the returns thereto, if any, must be furnished upon an application.

5. The official character of the officer taking the affidavits or depositions, and of the officer who issued the warrant, must be duly certified.

6. Upon the renewal of an application, — for example: on the ground that the fugitive has fled to another State, not having been found in the State on which the first was granted, — new or certified copies of papers, in conformity with the above rules, must be furnished.

7. In the case of any person who has been convicted of any crime, and escapes after conviction, or while serving his sentence, the application may be made by the jailer, sheriff, or other officer having him in custody, and shall be accompanied by certified copies of the indictment or information, record of conviction, and sentence upon which the person is held, with the affidavit of such person having him in custody, showing such escape, with the circumstances attending the same.

8. No requisition will be made for the extradition of any fugitive except in compliance with these rules.

Yours very respectfully,

\_\_\_\_\_,  
Private Secretary.

## FORMS.

[No. 1. — *Requisition.*]

### COMMONWEALTH OF MASSACHUSETTS.

*The Governor of the Commonwealth of Massachusetts to the  
Governor of the . . . of . . .*

WHEREAS, it appears by  
which hereunto annexed, and which I certify to be authentic  
and duly authenticated in accordance with the laws of this Com-  
monwealth, that  
stand charged with the crime of . . . , which I  
certify to be crime under the laws of this Commonwealth, com-  
mitted in the County of . . . , in this Commonwealth; and  
it having been represented to me that he ha fled from the  
justice of this Commonwealth, and may have taken refuge in the

;

Now, therefore, pursuant to the provisions of the Constitution  
and the laws of the United States in such case made and provided, I

do hereby require that the said  
 be apprehended and delivered to  
 who hereby authorized to receive and convey to the  
 Commonwealth of Massachusetts, there to be dealt with according  
 to law.

In witness whereof I have hereunto signed my name and caused  
 the Seal of the Commonwealth to be affixed, at the Capitol in Bos-  
 ton, this day of , in the year of our  
 Lord one thousand eight hundred and .

By His Excellency the Governor,

\_\_\_\_\_,  
*Secretary of the Commonwealth.*

[No. 2. — *Agent's Warrant.*]

### COMMONWEALTH OF MASSACHUSETTS.

*His Excellency* , *Governor of the*  
*Commonwealth, to all to whom these presents shall come.*

Know ye, that I have authorized and empowered, and by these  
 presents do authorize and empower  
 to take and receive from the proper authorities of the  
 of

, fugitive from justice, and convey to  
 the Commonwealth of Massachusetts, there to be dealt with accord-  
 ing to law.

In witness whereof, I have hereunto signed my name and caused  
 the Seal of the Commonwealth to be affixed, at the Capitol in Bos-  
 ton, this day of , in the year of our Lord  
 one thousand eight hundred and .

By his Excellency the Governor,

\_\_\_\_\_,  
*Secretary of the Commonwealth.*

The agent acting under this authority must make return, with  
 his doings thereon, to the Secretary of the Commonwealth within  
 thirty days.

[*Return.*]

I, , do hereby certify  
 that I have this day of 18 ,



honored the requisition of the Governor of the Commonwealth of Massachusetts for the surrender of \_\_\_\_\_, fugitive from the justice of said last named Commonwealth of Massachusetts, and have issued a warrant for \_\_\_\_\_ delivery to \_\_\_\_\_, agent of said Commonwealth of Massachusetts, whose authority to receive said fugitive is annexed hereto.

In witness whereof, I have hereunto signed my name and affixed the Seal of the \_\_\_\_\_, at the Capitol in \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and \_\_\_\_\_.

By the Governor,  
\_\_\_\_\_.

[No. 8. — *Rendition Warrant.*]

COMMONWEALTH OF MASSACHUSETTS.

*His Excellency \_\_\_\_\_, Governor of the Commonwealth, to \_\_\_\_\_, and the Sheriffs, Deputy Sheriffs, District Police, and other officers of and in the several cities and counties of this Commonwealth.*

WHEREAS, it has been represented to me by the Governor of the \_\_\_\_\_ of \_\_\_\_\_ that \_\_\_\_\_ stand charged with the crime of \_\_\_\_\_, which he certifies to be crime \_\_\_\_\_ under the laws of said \_\_\_\_\_, committed in the County \_\_\_\_\_ of \_\_\_\_\_ in said \_\_\_\_\_, and that \_\_\_\_\_ ha fled from the justice of said \_\_\_\_\_, and ha taken refuge in this Commonwealth, and the said Governor of the \_\_\_\_\_ of \_\_\_\_\_ having, in pursuance of the Constitution and laws of the United States, demanded of me that I shall cause the said \_\_\_\_\_ to be arrested and delivered to \_\_\_\_\_, who \_\_\_\_\_ duly authorized to receive \_\_\_\_\_ into his custody, and convey \_\_\_\_\_ back to the said \_\_\_\_\_ of \_\_\_\_\_;

And whereas the said representation and demand is accompanied by \_\_\_\_\_, whereby the said \_\_\_\_\_ shown to have been duly charged with the said crime \_\_\_\_\_, and with having fled from said \_\_\_\_\_ of \_\_\_\_\_

, and taken refuge in this Commonwealth,  
which duly certified by the said Governor of  
to be authentic and duly authenticated ;

Wherefore, you are required to arrest and secure the said  
, wherever may be found within  
this Commonwealth, and afford such opportunity to sue out a  
writ of *habeas corpus* as is prescribed by the laws of this Common-  
wealth, and to thereafter deliver into the custody of the said  
, to be taken back to  
the said of , from which fled,  
pursuant to the said requisition ; all of which shall be without charge  
to this Commonwealth ; and also to return this warrant and make  
return to the Secretary of the Commonwealth, within thirty days  
from the date hereof, of all your proceedings had thereunder, and  
of all facts and circumstances relating thereto.

In witness whereof, I have hereunto signed my name and caused  
the Seal of the Commonwealth to be affixed, this day of  
in the year of our Lord one thousand eight hundred  
and .

By his Excellency the Governor,

\_\_\_\_\_,

*Secretary of the Commonwealth.*

## COMMONWEALTH OF MASSACHUSETTS.

I, \_\_\_\_\_, Governor of the Commonwealth of Massa-  
chusetts, do hereby certify that I have this day of ,  
18 , honored the requisition of the Governor of , for  
the surrender of , fugitive from the justice of  
said last named , and have issued a warrant for  
delivery to , agent of said of ,  
whose authority to receive said fugitive is annexed hereto.

In witness whereof I have hereunto signed my name and caused  
the Seal of the Commonwealth to be affixed, at the Capitol in Bos-  
ton, this day of , in the year of our Lord one  
thousand eight hundred and .

By his Excellency the Governor,

\_\_\_\_\_,

*Secretary of the Commonwealth.*

## MICHIGAN.

**SECTION 9620.** The Governor of this State may, in any case authorized by the Constitution and laws of the United States, appoint agents to demand of the executive authority of any other State or Territory, or from the executive authority of any foreign government, any fugitive from justice, or any person charged with treason; and the accounts of the agents appointed for that purpose shall, unless otherwise directed by the Governor, be audited by the Auditor-General, and paid out of the State treasury.

**SECT. 9621.** Whenever a demand shall be made upon the Governor of this State by the Governor of any other State or Territory in any case authorized by the Constitution and laws of the United States, for the delivery over of any person charged in such State or Territory with treason, felony, or any other crime, and there shall be produced with such demand a copy of the indictment found or information filed, or affidavit, or complaint made before a magistrate of the State or Territory demanding, charging the person so demanded with having committed treason, felony, or other crime within such State or Territory, duly certified as authentic by the Governor or chief magistrate of the State or Territory from whence the person so charged fled, with due proof of the fleeing, it shall be the duty of the Governor of this State to issue an order or warrant to the sheriff of the county in which such person so charged may be found, commanding him to forthwith arrest such alleged fugitive and to deliver him to the duly authorized agent appointed by the executive authority making such demand to receive him and remove him to the proper place for prosecution. But the said sheriff, while the alleged fugitive is in his custody, and before delivering him up to the agent of the demanding State, shall afford him every proper facility to enable him to have a judicial examination if he desires it, by *habeas corpus* or otherwise, to ascertain whether the demand and arrest have been made conformably to the requirements of law, so that such person if he ought not to be delivered up may be duly discharged, and the Attorney-General, when required by the Governor, shall forthwith investigate the grounds of demand, and report to the Governor all material facts which may come to his knowledge, as to the situation and circumstances of the person so

demanded, and especially whether he is held in custody, or is under recognizance to answer for any offence against the laws of this State, or of the United States, or by virtue of any civil process, and also whether such demand was made conformably to law, so that such person ought to be delivered up.

SECT. 9622. If the Governor shall be satisfied that the demand is conformable to law, and ought to be complied with, he shall issue his warrant, under the seal of the State, authorizing the agents who make such demand, either forthwith, or at such time as shall be designated in the warrant, to take and transport such person to the line of this State, at the expense of such agents, and shall also by such warrant require the civil officers within this State to afford all needful assistance in the execution thereof.

SECT. 9623. Whenever any person shall be found within this State, charged with any offence committed in any other State or Territory, and liable by the Constitution and laws of the United States to be delivered over upon the demand of the Governor of such other State or Territory, any court or magistrate authorized to issue warrants in criminal cases, may, upon complaint on oath, setting forth the offence, and such other matters as are necessary to bring the case within the provisions of law, issue a warrant to bring the person so charged before the same or some other court or magistrate, within this State, to answer to such complaint as in other cases.

SECT. 9624. If, upon the examination of the person charged, it shall appear to the court or magistrate that there is reasonable cause to believe that the complaint is true, and that such person may be lawfully demanded of the Governor, he shall, if not charged with a capital crime, or with murder in the first degree, be required to recognize, with sufficient sureties, in a reasonable sum, to appear before such court or magistrate at a future day, allowing a reasonable time to obtain the warrant of the Governor, and to abide the order of such court or magistrate in the premises.

SECT. 9625. If such person shall not recognize, or if he shall be charged with a capital crime, or with the crime of murder in the first degree, he shall be committed to prison, and there detained until such day, in like manner as if the offence charged had been committed within this State; and, if the person so recognizing shall fail to appear according to the condition of his recognizance, he shall be defaulted, and the same proceedings shall be had as in

the case of other recognizances entered into before such court or magistrate.

SECT. 9626. If the person so recognized or committed shall appear before the court or magistrate upon the day ordered, he shall be discharged, unless he shall be demanded by some person authorized by the warrant of the Governor to receive him, or unless the court or magistrate shall see cause to commit him, or to require him to recognize anew for his appearance at some other day; and if, when ordered, he shall not so recognize, he shall be committed and detained as before; *Provided*, that whether the person so charged shall be recognized, committed, or discharged, any person authorized by the warrant of the Governor, may, at all times, take him into custody, and the same shall be a discharge of the recognizance, if any, and shall not be deemed an escape.

SECT. 9627. The complainant in any such case shall be answerable for all the actual costs and charges, and for the support in prison of any person so committed, to be paid weekly, or otherwise, as may be ordered by the court or magistrate; and, if the charge for his support in prison shall not be so paid, the jailer may, on the failure of the complainant, discharge such person from his imprisonment.

[Howell's Annotated Statutes of Michigan, 1882, title xl. chap. 338, pp. 2313, 2314.]

The rules governing applications for requisitions adopted by the Interstate Conference, 1887, are in force in Michigan, with a few slight modifications.

## FORMS.

[No. 1. — *Requisition.*]

STATE OF MICHIGAN.

EXECUTIVE DEPARTMENT.

\_\_\_\_\_, Governor in and over the State of Michigan, to  
the Governor of the \_\_\_\_\_ of \_\_\_\_\_.

WHEREAS, it appears by \_\_\_\_\_ which hereunto  
annexed, and which I certify to be authentic and duly authenticated,

in accordance with the laws of this State, that

stand charged with the  
crime of \_\_\_\_\_, which I certify to be  
crime \_\_\_\_\_ under the laws of this State, committed in the County of \_\_\_\_\_  
in this State, and it having been represented to  
me that he ha fled from the justice of this State and may  
have taken refuge in the \_\_\_\_\_ of \_\_\_\_\_;

Now therefore, pursuant to the provisions of the Constitution  
and the laws of the United States, in such case made and provided,  
I do hereby require that the said

\_\_\_\_\_ be apprehended and delivered to  
\_\_\_\_\_, who hereby  
authorized to receive and convey \_\_\_\_\_ to the State of Michigan,  
there to be dealt with according to law. The State to be liable  
for no expense incurred in the pursuit and arrest of said fugitive .

In witness whereof, I have hereunto signed my name and caused  
the Great Seal of the State to be affixed at the Capitol in the city  
of Lansing, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of  
our Lord one thousand eight hundred and ninety-\_\_\_\_\_.  
\_\_\_\_\_.

By the Governor,

\_\_\_\_\_,

*Secretary of State.*

[No. 2. — *Agent's Warrant.*]

## STATE OF MICHIGAN.

### EXECUTIVE DEPARTMENT.

\_\_\_\_\_, *Governor in and over the State of Michigan, to  
all to whom these Presents shall come, greeting.*

KNOW YE, that I have authorized and empowered, and by these  
presents do authorize and empower  
to take and receive from the proper authorities of the State of

\_\_\_\_\_, fugitive from justice from the State of Michigan,  
and convey \_\_\_\_\_ to the said State of Michigan, there to be dealt  
with according to law. The State to be liable for no expense  
incurred in the pursuit and arrest of said fugitive .

In testimony whereof, I have hereunto set my hand, and caused the great Seal of the State of Michigan to be hereunto affixed at Lansing, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and ninety-\_\_\_\_\_.  
\_\_\_\_\_.

By the Governor,  
\_\_\_\_\_,

*Secretary of State.*

[No. 3. — *Rendition Warrant.*]

## STATE OF MICHIGAN.

### EXECUTIVE DEPARTMENT.

\_\_\_\_\_, Governor in and over the State of Michigan, to the Sheriff of the County of \_\_\_\_\_ and the Sheriffs, Under Sheriffs and other officers of and in the several cities and counties of this State.

WHEREAS, it has been represented to me by the Governor of the \_\_\_\_\_ of \_\_\_\_\_, that \_\_\_\_\_ stand charged with the crime of \_\_\_\_\_, which he certifies to be \_\_\_\_\_ crime under the laws of said \_\_\_\_\_, committed in the County of \_\_\_\_\_ in said \_\_\_\_\_, and that he has taken refuge in the State of Michigan; and the said Governor of \_\_\_\_\_ having, in pursuance of the Constitution and laws of the United States, demanded of me that I shall cause the said \_\_\_\_\_ to be arrested and delivered to \_\_\_\_\_, who is duly authorized to receive \_\_\_\_\_ into his custody and convey \_\_\_\_\_ back to the said \_\_\_\_\_ of \_\_\_\_\_;

And whereas, the said representation and demand is accompanied by \_\_\_\_\_, whereby the said \_\_\_\_\_ shown to have been duly charged with the said crime, and with having fled from said \_\_\_\_\_ and taken refuge in the State of Michigan, which \_\_\_\_\_, duly certified by the said Governor of \_\_\_\_\_ to be authentic and duly authenticated;

Wherefore, you are required to arrest and secure the said \_\_\_\_\_ wherever \_\_\_\_\_

may be found within this State, and afford such opportunity to sue out a writ of *habeas corpus* as is prescribed by the laws of this State, and to thereafter deliver into the custody of the said , to be taken back to the said from which fled, pursuant to the said requisition, the said paying all proper costs and fees for the arrest, detention, and delivery of the said fugitive.

You will also return this warrant and make return to the Governor of this State within thirty days from the date hereof of all your proceedings had thereunder and of all facts and circumstances relating thereto.

Given under my hand, and the Great Seal of the State, at the Capitol in the city of Lansing, this day of , in the year of our Lord one thousand eight hundred and ninety- .

By the Governor,

\_\_\_\_\_,  
Secretary of State.

[Return.]

STATE OF MICHIGAN, } ss.  
County of

I, \_\_\_\_\_, sheriff of \_\_\_\_\_ County, in said State of Michigan, do hereby certify and return that pursuant to the requirements of the annexed warrant, I did on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, at the \_\_\_\_\_, in the County of \_\_\_\_\_, arrest \_\_\_\_\_, the alleged fugitive therein named \_\_\_\_\_ and \_\_\_\_\_, he not having demanded a judicial examination of said proceedings for which I afforded \_\_\_\_\_ proper facility \_\_\_\_\_, I delivered \_\_\_\_\_ to \_\_\_\_\_, the duly authorized agent appointed by executive authority to receive and remove \_\_\_\_\_ to the State of \_\_\_\_\_ for prosecution.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 189 \_\_\_\_.

\_\_\_\_\_, Sheriff.

[The sheriff should make return of his doings by virtue of the writ to the office of Secretary of State at Lansing, and the warrant with the certificate and return attached should be filed therein.]



[No. 4. — *Authority to Foreign Agent.*]

## STATE OF MICHIGAN.

## EXECUTIVE DEPARTMENT.

———, *Governor in and over the State of Michigan, to*  
*, Agent of the State of* .

WHEREAS, the Governor of the State of has by letters under his hand, and made patent by the Great Seal of the said State, represented to me that one has been guilty of a certain crime, hereinafter more particularly set forth, against the laws of said State, and that said

is duly charged in said State, under the laws thereof, with said crime ; and that said has fled from justice in said State, and taken refuge in the State of Michigan. And it further appearing satisfactorily to me that said has committed said crime as so represented, and that he is a fugitive who has fled from the justice of the said State of , to the State of Michigan ;

And whereas, the said Governor of the said State of has, by the said letters, in pursuance of the Constitution and laws of the United States, demanded of me the delivery up, as a fugitive from justice, as aforesaid, to be removed to the said State, the said , to the custody of , agent of the said State, who, as by said letters is represented to me, is duly appointed and authorized, as agent of the said State, to receive the said , and him to remove to the said State of ;

And whereas, the said Governor of the State of has moreover produced before me, certified as authentic by him, under his hand and the Great Seal of the State aforesaid , charging the said with the crime of , by him committed, in the County of , in said State, against the laws thereof ;

These are, therefore, in the name of the people of the State of Michigan, to authorize and empower you, whenever he can be found, if within the limits of the State of Michigan, to receive and take from the proper authorities thereof, the body of the said , and him to transport to the line of the

State of Michigan, at your own expense, in order that he may be removed to the said State of \_\_\_\_\_, there to answer to the charge made against him, as aforesaid.

And all sheriffs, constables, and other civil officers of the State of Michigan are hereby commanded and required to afford all needful assistance in the execution of this warrant, when thereto requested by said agent, at the expense of said agent.

In testimony whereof, I have hereunto set my hand, and caused the Great Seal of the State of Michigan to be hereunto affixed at Lansing, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and ninety-\_\_\_\_\_.  
\_\_\_\_\_.

By the Governor,

\_\_\_\_\_,  
*Secretary of State.*

## MINNESOTA.

### DEMANDING FUGITIVES FROM JUSTICE.

**1. Agents to demand Fugitives, how Appointed; Expenses how paid.**—The Governor may, in any case authorized by the Constitution and laws of the United States, appoint agents to demand of the executive authority of any State or Territory, any fugitive from justice, or any person charged with felony or any other crime, in this State; and whenever an application is made to the Governor for that purpose, the Attorney-General, when required by the Governor, shall forthwith investigate, or cause to be investigated by any county attorney, the grounds of such application, and report to the Governor all material circumstances which may come to his knowledge, with an abstract of the evidence, and his opinion as to the expediency of the demand; and the accounts of the agents appointed for such purpose shall, in all cases, be audited by the Governor, and paid from the State treasury. *Provided, however,* that the Governor when issuing his warrant shall deliver the same to the sheriff or some other public officer of any county in this State, and such officer, upon receipt of such warrant, shall have

power to arrest and detain in his custody the person whose surrender is demanded; but no such person arrested upon such warrant shall be delivered to the agent designated therein, or to any other person, until the person so arrested and whose surrender is demanded shall be notified of the demand made for his surrender, and of the nature of the criminal charge made against him, and not until he has had an opportunity to apply for a writ of *habeas corpus*, if he claims such right of the officer making the arrest. When such writ is applied for, notice thereof and of the time and place of the hearing thereon shall be given to the Attorney-General or other prosecuting officer of the judicial district in which the arrest is made. Any sheriff or other officer making such arrest, who shall deliver over to the agent named in such warrant, or to any other person, for extradition, the person so in his custody under such warrant, without having complied with the provisions of this Act, shall upon conviction thereof be fined in any sum not exceeding one thousand dollars, or imprisoned in the common jail of the county not exceeding six months, or be subject to both fine and imprisonment at the discretion of the court. (Laws 1879, chap. 44, par. 1.)

[Changes in the General Statutes of 1878, effected by the General Laws of 1879 and 1881; published 1883, p. 111.]

**2. Demand from another State; Proceedings; Warrant of Extradition.** — When a demand is made upon the Governor by the executive of any State or Territory, in any case authorized by the Constitution and laws of the United States, for the delivery over of any person charged in such State or Territory with treason, felony, or any other crime, the Attorney-General, when required by the Governor, shall forthwith investigate the ground of such demand, or cause the same to be investigated by any county attorney, and report to the Governor all material facts which may come to his knowledge as to the situation and circumstances of the person so demanded, especially whether he is held in custody, or is under recognizance, to answer for any offence against the laws of the State or of the United States, and also whether such demand is made according to law, so that such person ought to be delivered up; and if the Governor is notified that such demand is conformable to law, and ought to be complied with, he shall issue his warrant, under the seal of the State, authorizing such person as he

State of Michigan, at your own expense, in order that he may be removed to the said State of \_\_\_\_\_, there to answer to the charge made against him, as aforesaid.

And all sheriffs, constables, and other civil officers of the State of Michigan are hereby commanded and required to afford all needful assistance in the execution of this warrant, when thereto requested by said agent, at the expense of said agent.

In testimony whereof, I have hereunto set my hand, and caused the Great Seal of the State of Michigan to be hereunto affixed at Lansing, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and ninety-\_\_\_\_\_.  
\_\_\_\_\_.

By the Governor,

\_\_\_\_\_,  
*Secretary of State.*

## MINNESOTA.

### DEMANDING FUGITIVES FROM JUSTICE.

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power to arrest and detain in his custody the person whose surrender is demanded; but no such person arrested upon such warrant shall be delivered to the agent designated therein, or to any other person, until the person so arrested and whose surrender is demanded shall be notified of the demand made for his surrender, and of the nature of the criminal charge made against him, and not until he has had an opportunity to apply for a writ of *habeas corpus*, if he claims such right of the officer making the arrest. When such writ is applied for, notice thereof and of the time and place of the hearing thereon shall be given to the Attorney-General or other prosecuting officer of the judicial district in which the arrest is made. Any sheriff or other officer making such arrest, who shall deliver over to the agent named in such warrant, or to any other person, for extradition, the person so in his custody under such warrant, without having complied with the provisions of this Act, shall upon conviction thereof be fined in any sum not exceeding one thousand dollars, or imprisoned in the common jail of the county not exceeding six months, or be subject to both fine and imprisonment at the discretion of the court. (Laws 1879, chap. 44, par. 1.)

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shall name therein, either forthwith or at the time designated by the warrant, to take and transport the person so demanded to the line of the State, at the expense of the State or Territory in whose name such person may have been demanded, and to deliver over such person, at the line of the State, to the agent of the State or Territory making such demand; and shall also, by such warrant, require the civil officers within this State to afford all needful assistance in the execution thereof. (As amended 1874, chap. 15, par. 1.)

**3. Fugitive from another State may be Arrested, when; Proceedings.** — Whenever any person is found within this State, charged with any offence committed in any State or Territory, and liable by the Constitution and laws of the United States to be delivered over upon the demand of the executive of such State or Territory, any court or magistrate authorized to issue warrants in criminal cases may, upon complaint under oath, setting forth the offence, and such other matters as are necessary to bring the case within the provisions of law, issue a warrant to bring the person so charged before the same, or some other court or magistrate within the county where such person is found. (14 M. 385.)

**4. May give Recognizance, when; Failure to Appear.** — If, upon examination of the person charged, it appears to the court or magistrate that there is reasonable cause to believe that the complaint is true, and that such person may be lawfully demanded of the Governor, he shall, if the offence is bailable, be required to recognize with sufficient sureties, in a reasonable sum, to appear before such court or magistrate at a future day, allowing a reasonable time to obtain the warrant of the executive, and to abide the order of the court or magistrate; and if such person shall not so recognize, he shall be committed to prison, and there detained until such day, in like manner as if the offence charged had been committed within this State; and if the person so recognizing fails to appear according to the condition of his recognizance, he shall be defaulted, and the like proceeding shall be had as in case of other recognizances entered into before such court or magistrate; but if the offence is not bailable, he shall be committed to prison, and there detained until the day so appointed for his appearance before the court or magistrate.

**5. Shall be Discharged, when.** — If the person so recognized or committed appears before the court or magistrate upon the day

ordered, he shall be discharged unless he is demanded by some person authorized by the warrant of the executive to receive him, or unless the court or magistrate sees cause to commit him, or to require him to recognize anew, for his appearance at some other day; and if when ordered, he shall not so recognize, he shall be committed and detained as before provided; whether the person so discharged is recognized, committed, or discharged, any person authorized by the warrant of the executive may at all times take him into custody, and the same is a discharge of the recognizance, if any, and shall not be deemed an escape.

6. **Complainant liable for Expenses; Discharge on Failure to Pay.** — The complainant in such case shall be answerable for the actual costs and charges, and for the support in prison of any person so committed, and shall advance to the jailer one week's board at the time of commitment, and so from week to week so long as such persons shall remain in jail; and if he fails so to do, the jailer may forthwith discharge such person from custody.

7. **Conveying Prisoners through this State.** — Any person who has been or shall be convicted of or charged with any crime, in any other State or Territory of the United States, and who shall be lawfully in the custody of any officer of the State or Territory where such offence is claimed to have been committed, may be by said officer conveyed from and through this State, for which purpose said officer shall have all the powers in regard to the control and custody of said prisoner, that an officer of this State has over a prisoner in his charge. (1877, chap. 104, par. 1).

[Statutes of Minnesota, 1878, pp. 926-928.]

## APPLICATION FOR REQUISITIONS.

### STATE OF MINNESOTA.

#### EXECUTIVE DEPARTMENT.

ST. PAUL,

, 189 .

\_\_\_\_\_,  
\_\_\_\_\_.

DEAR SIR, — The following rules, having been adopted by the Interstate Extradition Conference, lately held at the city of New

York, are submitted for your guidance in making applications for requisitions.

The application must be made by the district or prosecuting attorney for the county or district in which the offence was committed, and must be in duplicate original papers or certified copies thereof. The following must appear by the certificate of the district or prosecuting attorney : —

A. The full name of the person for whom extradition is asked, to be properly spelled in Roman capital letters, for example: JOHN DOE, and the name of the agent proposed.

B. That in his opinion the ends of public justice require that the alleged criminal be brought to this State for trial at the public expense.

C. That he believes he has sufficient evidence to secure the conviction of the fugitive.

D. That the person named as agent is a proper person, and that he has no private interest in the arrest of the fugitive.

E. If there has been any former application for requisition for the same person, growing out of the same transaction, it must be so stated, with an explanation of the reason for the second requisition, together with the date of such application as near as may be.

F. If the fugitive is known to be under either civil or criminal arrest in the State or Territory to which he is alleged to have fled, the fact of such arrest and the nature of the proceedings on which it is based must be stated.

G. That the application is not made for the purpose of enforcing the collection of a debt, or for any private purpose whatever, and that if the requisition applied for be granted the criminal proceedings shall not be used for any of said objects.

H. The nature of the crime charged, with a reference, when practicable, to the particular statute defining and punishing the same.

I. If the offence charged is not of recent occurrence, a satisfactory reason must be given for the delay in making the application.

(1) In all cases of fraud, false pretences, embezzlement, or forgery, when made a crime by the common law or any penal code or statute, an affidavit of the principal complaining witness or informant that the application is made in good faith, for the sole purpose of punishing the accused, and that he does not desire or expect to use the prosecution for the purpose of collecting a debt, or for any



private purpose, and will not directly or indirectly use the same for any of said purposes, shall be required, or a sufficient reason must be given for the absence of such affidavit.

(2) Proof by affidavit of facts and circumstances satisfying the executive that the alleged criminal has fled from justice of the State, and is in the State on whose executive the demand is requested to be made, must be given. The fact that the alleged criminal was in the State at the time of the commission of the offence and is now in the State upon which the requisition is made, is sufficient evidence, in the absence of other proof, that he is a fugitive from justice. To meet the requirements of some States that have not adopted these rules, these facts should appear by affidavit, and the fact upon which the affidavit is based, that the fugitive is now in such State, must be given in such affidavit, as that affiant has received letters from parties advising him of that fact, or has conversed with parties who have seen the fugitive in such State.

(3) If an indictment has been found, certified copies in duplicate must accompany the application.

(4) If an indictment has not been found by the Grand Jury, the facts and circumstances showing the commission of the crime charged, and that the accused perpetrated the same, must be shown by affidavits taken before a magistrate (a notary public is not a magistrate within the meaning of these rules), and that a warrant has been issued, and duplicate certified copies of the same, together with the returns thereon, if any, must be furnished upon an application.

(5) The official character of the officer taking the affidavits or depositions, and of the officer who issued the warrants, must be duly certified.

(6) Upon the renewal of an application, for example, on the ground that the fugitive has fled to another State, not having been found in the State in which the first was granted, new or certified copies of papers, in conformity with the above rules, must be furnished.

(7) In the case of any person who has been convicted of any crime, and escapes after conviction or while serving his sentence, the application may be made by the jailer, sheriff, or other officer having him in custody, and shall be accompanied by copies of the indictment or information, record of conviction, and sentence upon

which the person is held, with the affidavit of such person having him in custody, showing such escape, with the circumstances attending the same.

(8) No requisition will be made for the extradition of any fugitive except in compliance with these rules.

In addition to the foregoing rules, the following suggestions should be observed : —

There should be a formal application addressed to the executive of this State by the county attorney, which may embrace the certificate first mentioned in the foregoing rules, including the paragraphs “ A ” to “ H,” inclusive.

The affidavit required in sub-division (1), paragraph “ I,” must be made by the principal complaining witness. The affidavit required in sub-division (2), paragraph “ I,” may be made by any person having knowledge of the facts therein referred to.

The affidavit required by sub-division (4) should be made by the complaining witness, and it is meant that the facts and circumstances shall be set forth with more particularity than in the complaint sworn to before the magistrate, it being assumed that in the absence of the formal act of the grand jury, there should be some evidence upon which to base a supposition that the party charged with the offence is guilty.

These various affidavits may be embodied in one affidavit, when made by the complaining witness, and the facts are within his knowledge.

Great care should be taken that all papers are properly certified to, and accompanying the papers should be a certificate of the magistrate before whom the proceedings are pending, that in his opinion all parties having made affidavits, which are sent with the proceedings, are to be believed, and that the facts therein stated present a proper case for a requisition, and the official character of the magistrates before whom affidavits are taken, must be certified to by the clerk of the district court where such magistrate is not judge of the court of record.

All filings and endorsements upon the original papers should appear upon certified copies, and the certificate should show that they are not only copies of the originals, but also of such filings and endorsements.

The policy of the States is to discourage extradition for petty offences, and it is suggested that requisitions be not asked for in petty

offences, as they are liable to be refused by the States upon whom the demand is made.

In all cases, the greatest care will be exercised in this department to ascertain, beyond a doubt, that the object in seeking the requisition is not to collect a debt, or to afford some person an opportunity to travel at the public expense, or to answer some other private end, and if a requisition shall have been improperly or unadvisedly granted, there will be no hesitation in promptly revoking it.

Requisitions will, as a general thing, be granted only upon the express condition inserted in the warrant, that no portion of the expense shall fall upon the State. This rule will be waived only in extraordinary cases, although the expense may sometimes, under the rule, be imposed upon the complainant or applicant.

The rule requiring duplicates of all papers includes a formal application or letter of the county attorney.

The county attorney making the requisition must within six months, unless sooner requested, after it is issued, make a full return, accompanied by the affidavit of the gentleman named therein, fully stating all proceedings had thereunder and upon the indictment or complaint on which the same was based.

In all cases of extradition where the fugitive is beyond the jurisdiction of the United States, it would be better to confer at once with the Attorney-General, or address the State Department at Washington, which, upon request, will furnish a copy of the rules governing United States extradition.

It should be borne in mind that the rules and suggestions herein contained are not made by this State, for compliance by officers of this State, but are made by other States, and must be complied with by officers of this State in order to entitle this State to recognition upon a claim for extradition; therefore a strict compliance with these rules and suggestions will be required, as a waiver on the part of this State would not avail when the proceedings came to be tested in the State upon which the demand is made.

Very respectfully,

\_\_\_\_\_,  
Governor.

## MISSISSIPPI.

§ 198. It shall be the duty of the Governor of this State, on demand made by the executive authority of any other State, Territory, or district, for any person charged, on affidavit or indictment, in such other State, Territory, or district, with a criminal offence (and who shall have fled from justice, and be found in this State), accompanied with a copy of such affidavit or indictment, certified as authentic by such executive authority, to cause such offender to be arrested and delivered up to the authority of such State, Territory, or district, for removal to the jurisdiction having cognizance of such offence, upon the payment of the costs and expenses consequent on such arrest; and it shall be the duty of the Governor, in like manner, to demand and receive fugitives from justice, for offences committed in this State.

§ 3120. Any justice of the peace, or other conservator of the peace, upon complaint on oath made before him, or on other satisfactory evidence, that any person found within this State has committed treason, felony, or other crime, in some other State or Territory, and has fled from justice, may issue a warrant for the arrest of such person, as if the offence had been committed in this State.

§ 3121. If it shall appear to the justice of the peace or other officer before whom such person shall be brought, that there is reasonable cause to believe that the complaint is true, he shall, if the prisoner would be entitled to bail if the offence had been committed in this State, require him to furnish bail to appear before the circuit court of the county at its next term, and from day to day and term to term until discharged by law; and, if such person shall not give bail with sufficient sureties as required, he shall be committed to jail until he shall give such bail, or until he shall be discharged as hereinafter provided. If such person would not be bailable if the offence charged had been committed in this State, he shall be committed to jail to remain until discharged as hereinafter provided.

§ 3122. Any recognizance or bond so taken shall be delivered at once to the clerk of the circuit court before which the party is bound to appear, and like proceedings shall be had thereon as in case of other recognizances, to appear before said court.

§ 3123. The justice of the peace or other officer recognizing or committing such person shall immediately report the fact to the Governor of this State, who shall thereupon communicate the information to the executive of the State or Territory in which the offence is charged to have been committed.

§ 3124. If the person so recognized shall appear before the circuit court, according to his obligation, he shall be discharged by such court, unless he shall be demanded by some person authorized by the Governor of this State to demand him, or unless such court shall commit him, if he was improperly admitted to bail, or shall recognize him anew, if his recognizance be insufficient, or shall order his recognizance as first given to continue in force for a longer time: but any such person may, at any time, be taken into custody by any person authorized by the Governor of this State, and such taking into custody shall be a discharge from any recognizance he may have given.

§ 3125. The person making complaint to procure the arrest of any person, as above provided for, shall be answerable for all the costs of the arrest and trial, and for the jail fees of any person committed to jail; and the justice of the peace or other officer applied to may require such deposit of money, or security for the payment of all costs, charges, and fees in such proceeding as he thinks reasonable, and may refuse to issue a warrant, or to commit a person to jail, or do anything in such matter until compliance with his requirement of a deposit or other security for the payment of the costs and jail fees likely to be incurred.

[Revised Code of Mississippi, 1880, pp. 94, 798, 799.]

## REQUISITIONS.

No rules have been adopted to govern applications for requisitions, but the following form is used:—

### APPLICATION FOR REQUISITION.

THE STATE OF MISSISSIPPI, }  
County, }

PERSONALLY appeared before me , for said  
county, , who made oath that stands

charged in the County of \_\_\_\_\_ with the crime of \_\_\_\_\_, as evidenced by the accompanying certified copy of \_\_\_\_\_; that the said \_\_\_\_\_ is a fugitive from the justice of this State, and has taken refuge in the State of \_\_\_\_\_, that the ends of justice require that he be brought to trial. That this process is not for the purpose of collecting debt, or for any other purpose whatever, but for punishing the crime with which he is charged, and that \_\_\_\_\_ is named as a suitable person to be appointed agent on the part of this State to receive and return the said fugitive to the State of Mississippi.

Sworn to and subscribed before me, this \_\_\_\_\_ day of \_\_\_\_\_, 189 .

## FORMS OF WARRANTS.

[No. 1. — *Requisition.*]

### STATE OF MISSISSIPPI.

*To his Excellency, the Governor of* \_\_\_\_\_.

WHEREAS, it appears, by the annexed copy of an \_\_\_\_\_, which is hereby certified to be authentic, that \_\_\_\_\_ stands charged in the County of \_\_\_\_\_, in this State, with the crime of \_\_\_\_\_, and information having been received by me that the said \_\_\_\_\_ has fled from justice, and taken refuge in the State of \_\_\_\_\_;

Therefore, I, \_\_\_\_\_, Governor of the State of Mississippi, have thought proper, in pursuance of the provisions of the Constitution and laws of the United States, to demand the surrender of the said \_\_\_\_\_ as a fugitive from justice, and that he be delivered to \_\_\_\_\_, who is hereby appointed the agent on the part of the State to receive him.

(This State will not be responsible for any expense attending the execution of this requisition for the arrest and delivery of fugitives from justice.)

Given under my hand, and the Great Seal of the State affixed, at the city of Jackson, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. one

thousand eight hundred \_\_\_\_\_, and of the Independence of  
the United States of America, the one hundred and \_\_\_\_\_.

By the Governor,

\_\_\_\_\_,  
*Secretary of State.*

[No. 2. — *Agent's Warrant.*]

## STATE OF MISSISSIPPI.

### EXECUTIVE DEPARTMENT.

\_\_\_\_\_, *Governor of the State of Mississippi, to all to  
whom these presents shall come, greeting:*

Know ye, that we have authorized and empowered, and by these  
presents do authorize and empower \_\_\_\_\_ to take and  
receive, from the proper authorities of the State of \_\_\_\_\_,  
\_\_\_\_\_, a fugitive from justice, and convey him to the State  
of Mississippi, there to be dealt with according to law.

(This State will not hold itself responsible for the expenses at-  
tending the execution of this requisition.)

In witness whereof, I have hereunto signed my name and caused  
the Great Seal of the State of Mississippi to be affixed, at the city  
of Jackson, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord  
one thousand eight hundred and \_\_\_\_\_.

By the Governor,

\_\_\_\_\_,  
*Secretary of State.*

[No. 3. — *Rendition Warrant.*]

\_\_\_\_\_, *Governor of the State of Mississippi, to the  
Sheriff of \_\_\_\_\_ County, or to the Sheriff of any other  
County, greeting.*

WHEREAS, his Excellency, the Governor of the State of \_\_\_\_\_,  
has made known to me that \_\_\_\_\_ stands charged with  
having committed the crime of \_\_\_\_\_;

And whereas, it appears that said \_\_\_\_\_ has fled from justice, and is to be found in the State of Mississippi, where he has taken refuge ;

And whereas, the Governor aforesaid has demanded of me the arrest and delivery of said \_\_\_\_\_ to \_\_\_\_\_, whom he has appointed agent to receive and convey said \_\_\_\_\_ to the jurisdictional limits within which he stands charged.

Now, therefore, I, \_\_\_\_\_, Governor of the State of Mississippi, do, by virtue of the power vested in me by the Constitution and laws of this State, direct and require you to arrest the said \_\_\_\_\_, and deliver him to the custody of the said \_\_\_\_\_, the agent appointed by the Governor of \_\_\_\_\_, to the end that he may be conveyed to the jurisdictional limits where he stands charged.

In testimony whereof, witness my hand and signature, and the Great Seal of the State of Mississippi hereunto affixed, this day of \_\_\_\_\_, 189 . .

By the Governor,

\_\_\_\_\_,  
Secretary of State.

## MISSOURI.

### OF FUGITIVES FROM JUSTICE.

**SECTION 5190. Governor to issue Warrant, when.** — Whenever the executive of any other State shall demand of the executive of this State any person as a fugitive from justice, and shall have complied with the requisites of the act of Congress in that case made and provided, it shall be the duty of the executive of this State to issue his warrant, under the seal of the State, directed to any sheriff, coroner, or other person whom he may think fit to entrust with the execution of such warrant. (G. S. 869, par. 1.)

**SECT. 5191. Warrant, to give what Authority.** — The warrant shall authorize the officer or person to whom it is directed, to arrest the fugitive anywhere within the limits of this State, and convey him to any place therein named, and shall command all sheriffs, coro-



ners, constables, and other officers to whom the warrant may be shown, to aid and assist in the execution thereof. (G. S. 869, par. 2.)

**SECT. 5192. Where and how executed.** — Every warrant so issued may be executed in any part of the State, and the officer or person to whom it is directed shall have the same power to command assistance therein, and in receiving and conveying to the proper place any person duly arrested by virtue thereof, as sheriffs and other officers, by law, have in the execution of civil or criminal process directed to them, with like penalties on those who refuse their assistance. (G. S. 869, par. 3.)

**SECT. 5193. Power and Duty of Officer arresting.** — The officer or person executing such warrant may, when necessary, confine the prisoner arrested by him in the jail of any county through which he may pass, in conveying such prisoner to the place commanded in the warrant; and the keeper of such jail shall receive and safely keep such prisoner until the person having him in charge shall be ready to proceed on his route. (G. S. 869, par. 4.)

**SECT. 5194. Expenses, how paid.** — The expenses which may accrue under the foregoing sections of this chapter shall be paid by the State or Territory making the demand of such fugitive from justice. (Laws 1877, p. 206, par. 1.)

**SECT. 5195. Judge or Justice may issue Warrant, when.** — Whenever any person within this State shall be charged, on the oath or affirmation of any credible witness, before any judge or justice of a court of record, or a justice of the peace, with the commission of any crime in any other State or Territory of the United States, and that he fled from justice, it shall be lawful for the judge or justice to issue his warrant for the apprehension of the party charged. (G. S. 869, par. 6.)

**SECT. 5196. On Examination, Party may be committed.** — If, upon examination, it shall appear to the judge or justice that the person charged is guilty of the crime alleged, he shall commit him to the jail of the county; or, if the offence is bailable, take bail for his appearance at the next term of the court of the county having criminal jurisdiction. (G. S. 870, par. 7.)

**SECT. 5197. Proceedings on Examination.** — The judge or justice shall proceed in the examination in the same manner as is required when a person is brought before such officer charged with an offence against the laws of this State, and shall reduce the examination to

writing, and make return thereof as in other cases, and shall also send a copy of the examination and proceedings to the Governor of this State without delay. (G. S. 870, par. 8.)

**SECT. 5198. Duty of the Governor.**— If, in the opinion of the Governor, the examination contains sufficient evidence to warrant the finding of an indictment, he shall forthwith notify the executive of the State or Territory in which the crime is alleged to have been committed, of the proceedings against the person arrested, and that he will be delivered on demand, without requiring a copy of an indictment to accompany the demand. (G. S. 870, par. 9.)

**SECT. 5199. Offender to be delivered upon Demand.**— When a demand shall be made for the offender, the Governor shall forthwith issue his warrant, under the seal of the State, to the sheriff of the county wherein the party charged is committed or bailed, commanding him to surrender the accused to such messenger as shall be therein named, to be conveyed out of the State. (G. S. 870, par. 10 a.)

**SECT. 5200. If at large on Bail, Sheriff authorized to take him.**— If the accused shall be at large, on bail or otherwise, it shall be lawful for the sheriff to arrest him forthwith, anywhere within the State, and to surrender him agreeably to the command of the warrant. (G. S. 870, par. 11.)

**SECT. 5201. Circuit Court may discharge.**— In all cases where the party shall have been admitted to bail, and shall appear according to the condition of his recognizance, and he shall not have been demanded, the court may discharge the recognizance or continue it, according to the circumstances of the case, such as distance of the place where the offence is alleged to have been committed, the time since the arrest, the nature of the evidence, and the like. (G. S. 870, par. 12.)

**SECT. 5202. Not to be kept in Prison.**— In no case shall the party be kept in prison or held to bail beyond the end of the second term of the court after the arrest; and if no demand is made for him within that time, he shall be discharged. (G. S. 870, par. 13.)

**SECT. 5203. Recognizance to inure to State.**— When any such recognizance shall be forfeited, it shall inure to the benefit of the State. (G. S. 870, par. 14.)

**SECT. 5204. Security for Costs.**— When a complaint shall be made against any person, as provided by this chapter, the judge or

justice shall take from the prosecutor a bond, to the clerk of the court, with sufficient security, to secure the payment of the costs and expenses which may accrue by occasion of the arrest and detention of the party charged, which bond shall be certified and returned, with the examination, to the office of the clerk of the court having criminal jurisdiction. (G. S. 870, par. 15.)

**SECT. 5205. Costs, how collected.** — Upon the determination of the proceedings in that court, the clerk may issue fee bills, which shall be served on the principal and securities in the bond, by the sheriff, in the same manner as other fee bills, for which service the sheriff shall be allowed the same fees as for serving notices. (G. S. 870, par. 16.)

**SECT. 5206. If not paid, Execution to issue, when.** — If the costs and charges are not paid on or before the first day of the next term of the court, nor any cause shown why they should not be paid, the clerk may issue execution for the same against the parties on whom the fee bills were served. (G. S. 870, par. 17.)

**SECT. 5207. Preceding Sections construed.** — Nothing in the two preceding sections shall be construed to prevent the clerk from instituting suit on such bond for the recovery of the costs and charges. (G. S. 871, par. 18.)

**SECT. 5208. Bail may be taken.** — Whenever any person shall have been committed to the jail of the county, upon examination for a bailable offence, under the provisions of this chapter, he may be let to bail, with sufficient security for his appearance at the next term of the court of the county having criminal jurisdiction, by the court or judge of the court having criminal jurisdiction, or by any judge or justice of the county court. (G. S. 871, par. 19.)

[Revised Statutes of Missouri, 1889, Vol. II. chap. lxxii. pp. 1259–1261.]

**SECT. 4323. Messenger, when to be appointed.** — Whenever the Governor of this State shall demand a fugitive from justice from the executive of another State or Territory, and shall have received notice that such fugitive will be surrendered, he shall issue his warrant under the seal of the State, to some messenger, commanding him to receive such fugitive and convey him to the sheriff of the county in which the offence was committed, or is by law cognizable.

**SECT. 4324. Expenses under Preceding Section, how paid.** — The expenses which may accrue under the last section, being first

ascertained to the satisfaction of the Governor, shall, on his certificate, be allowed and paid out of the State treasury, as other demands against the State.

[Criminal Code of Missouri.]

## RULES.

### *Instructions to Prosecuting Attorneys.*

ALL papers, including the petition, must be in duplicate. In case of applications for requisitions on the State of Ohio, triplicate copies of the indictment, or affidavit before a magistrate, must be furnished this department, and depositions, strongly maintaining the guilt, must be forwarded by the agent of the State, in support of the requisitions.

If the application is made upon an affidavit before a justice of the peace, there must be attached the certificate of the county clerk that he was a justice of the peace at the time the affidavit was made.

In all cases of false pretences, embezzlement, conspiracy, and similar crimes, the strongest affirmative evidence will be required to be shown by the *affidavit of the injured party* that the real object is not the collection of a private debt. In these cases have the injured party make the affidavit printed in the petition; in other cases the prosecuting attorney will make such affidavit, as well as sign the petition.

If the offences are not of recent occurrence, sufficient reasons must be given why the application has been delayed. These reasons can be written in the blank spaces immediately preceding the words "That he is familiar with the evidence," etc.

As notaries public are not "magistrates" within the meaning of the Federal law, no application for requisition, based upon affidavits made before a notary public, will be granted.

In no case can a requisition be granted at the same time for the same offence upon the Governor of more than a single State.

The endorsement "A true bill," and the name and style of the foreman of the grand jury, should be copied by the clerk next to the indictment, so as to be covered by his certificate.

When practicable, require all official acts touching papers that go out of the State to be done by the officer himself and not by his deputy.

Detach this leaf and hand to the agent.

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*Instructions to Agents.*

When the fugitive has been returned, and the conditions stipulated in the commission have been complied with, the agent may file with the Governor a bill, in accordance with the following rules: —

1. The bill must specify every route of travel, the number of miles and charges thereon. When payments are made to officers in other States, their receipt *must* be appended, with certificates that the charges made are in accordance with law.

2. The agent's commission should always be returned to the executive office, with a brief history of its execution written on its back, specifying dates, like an officer's return upon a writ, and sworn to before an officer having a seal, or before a judge of a court of record.

3. The State will be at no expense for the return of fugitives, unless such fugitives are returned to the State, and delivered to the sheriff of the county in which the crime was committed, and his receipt for the body of the prisoner forwarded to this office. The agent will not be paid mileage, but only the actual travelling expenses of himself and prisoner, and \_\_\_\_\_ dollars per day, for the time actually occupied, in going for and returning with the prisoner will be allowed. No other expenses will be allowed, nor will anything be allowed for a guard. No sleeping-car expenses will be allowed. No expenses of identifying witness will be allowed; if one is required, let him be the agent. No agent has the right to employ an attorney for any purpose except at his own expense.

To the bill should be attached the following, or an equivalent, affidavit: —

STATE OF MISSOURI,                    }  
County of                               } ss.

I, \_\_\_\_\_, upon oath, do declare that the charges enumerated in the foregoing bill were incurred in making the arrest and effecting the return of \_\_\_\_\_, in ac-

cordance with authority conferred upon me by the Governor of the State of Missouri; that the mileage therein shown exhibits the actual number of miles by me travelled; that such charges and said mileage were absolutely necessary to accomplish the object for which end authority was conferred; and that I have received no payment on account thereof from any source whatever, nor do I expect any except from the State of Missouri.

Subscribed and sworn to before me, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 189 .

\_\_\_\_\_,  
Notary Public in and for \_\_\_\_\_ County.

N. B. — This affidavit may be sworn to before any officer having a seal, or a judge of a court of record.

\_\_\_\_\_, Governor of Missouri.

The undersigned \_\_\_\_\_, prosecuting attorney for the County of \_\_\_\_\_, and State of Missouri, represents that \_\_\_\_\_ stands charged by the accompanying certified copy of an \_\_\_\_\_, with the crime of \_\_\_\_\_, committed in the County of \_\_\_\_\_, and State of Missouri, on or about the \_\_\_\_\_ day of \_\_\_\_\_, 189 .

That on or about the \_\_\_\_\_ day of \_\_\_\_\_, 189 , the said \_\_\_\_\_ fled from the State of Missouri, and is now, as your petitioner believes, in the County of \_\_\_\_\_, and State of \_\_\_\_\_, a fugitive from justice, and the grounds for such belief are: —

That he is familiar with the evidence, and verily believes that in the event of a trial the accused will be convicted; and that the ends of justice require that he should be brought back to this State for trial. Wherefore your petitioner asks that a requisition issue upon the Governor of the State of \_\_\_\_\_, and that \_\_\_\_\_ may be appointed messenger of the State of Missouri to go after, receive, and return to said County of \_\_\_\_\_, State of Missouri, the said fugitive for trial.

\_\_\_\_\_,  
Prosecuting Attorney.

I, \_\_\_\_\_, being first duly sworn, do solemnly declare that the facts set forth in the foregoing petition are true, and that a requisition for the above-named fugitive is not sought for the purpose of collecting a debt, to allow any person to travel at the expense of the State, or to answer any private end whatever.

Subscribed and sworn to before me, this  
day of \_\_\_\_\_, A. D. 189 .

Witness my hand and seal of office.

## FORMS OF WARRANTS.

[No. 1. — *Requisition.*]

### STATE OF MISSOURI.

*To his Excellency, the Governor of the State of*

WHEREAS, it appears from the annexed \_\_\_\_\_ and papers, which I hereby certify to be authentic, and duly authenticated according to the laws of the State of Missouri, that stand charged by \_\_\_\_\_ with the crime of \_\_\_\_\_, committed in the \_\_\_\_\_ of \_\_\_\_\_ in this State, and it has been represented to me that \_\_\_\_\_ fled from justice of this State, and taken refuge within the limits of the State of \_\_\_\_\_;

Now, therefore, I, \_\_\_\_\_, Governor of the State of Missouri, pursuant to the provisions of the Constitution and laws of the United States, in such cases made and provided, do hereby make requisition for the apprehension of said \_\_\_\_\_

, and for \_\_\_\_\_ delivery to \_\_\_\_\_, who is authorized to receive and convey \_\_\_\_\_ to the State of Missouri, there to be dealt with according to law.

In testimony whereof, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri. Done at the city of Jefferson, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord, one thousand eight hundred and ninety-\_\_\_\_\_, of the Independence of the United States the one hundred and \_\_\_\_\_, and of the State of Missouri the sixty-\_\_\_\_\_.  
\_\_\_\_\_.

By the Governor,

\_\_\_\_\_  
*Secretary of State.*

[No. 2. — *Agent's Warrant.*]

## STATE OF MISSOURI.

To \_\_\_\_\_, greeting.

WHEREAS, \_\_\_\_\_, late of the  
of \_\_\_\_\_, in the State of Missouri, charged  
by \_\_\_\_\_, with committing the crime of \_\_\_\_\_,  
within the \_\_\_\_\_ of \_\_\_\_\_, in this State, and \_\_\_\_\_ by a  
requisition of this date, been demanded of the Governor of the  
State of \_\_\_\_\_ as fugitive from justice ;

Now, therefore, I, \_\_\_\_\_, Governor of the State of Mis-  
souri, do hereby appoint and authorize you, as my agent on the part  
of the State, to receive the said \_\_\_\_\_ from  
the executive authority of the said State of \_\_\_\_\_, and  
convey to this State, and deliver \_\_\_\_\_ to the \_\_\_\_\_,  
to be tried for the offence aforesaid, according to law. And make  
return hereof to this Department, with the indorsement thereon, of  
how you execute the same.

In testimony whereof, I have hereunto set my hand and caused  
to be affixed the Great Seal of the State of Missouri. Done at the  
city of Jefferson, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of  
our Lord, one thousand eight hundred and ninety-\_\_\_\_\_, of the  
Independence of the United States the one hundred and \_\_\_\_\_,  
and of the State of Missouri the sixty-\_\_\_\_\_.  
\_\_\_\_\_.

By the Governor,

\_\_\_\_\_,  
*Secretary of State.*

[No. 3. — *Rendition Warrant.*]

## STATE OF MISSOURI.

*To the Sheriff or Marshal of any county or city in this State.*

WHEREAS, the Governor of the State of \_\_\_\_\_ has de-  
manded of the Governor of this State \_\_\_\_\_,  
fugitive from justice from said State ; and whereas the Governor  
of \_\_\_\_\_ has produced to me a copy of an



in said State, certified to be authentic, charging said fugitive with having committed the crime of \_\_\_\_\_ ;

Now, therefore, I, \_\_\_\_\_, Governor of the State of Missouri, do hereby command you to arrest the said \_\_\_\_\_, anywhere within the limits of this State, and \_\_\_\_\_ secure and deliver to \_\_\_\_\_, who is the agent of said State of \_\_\_\_\_, duly authorized to receive the said fugitive.

And I do hereby command all sheriffs, marshals, constables, and police officers to whom this warrant may be shown, to aid and assist in the execution of this process. And you will make due return to me on this warrant of your proceedings thereunder.

In testimony whereof, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri. Done at the city of Jefferson, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord, one thousand eight hundred and ninety-\_\_\_\_\_, of the Independence of the United States the one hundred and \_\_\_\_\_, and of the State of Missouri the sixty-\_\_\_\_\_.  
\_\_\_\_\_.

By the Governor,

\_\_\_\_\_,  
*Secretary of State.*

## MONTANA.

SECTION 449. Whenever the Governor of this Territory shall demand a fugitive from justice from the executive of another State or Territory, and shall have received notice that such fugitive will be surrendered, he shall issue his warrant, under the seal of the Territory, to some messenger, commanding him to receive such fugitive, and convey him to the sheriff of the county in which the offence was committed, or is by law cognizable.

SECT. 450. The expenses which may accrue under the last section, being first ascertained to the satisfaction of the Governor, shall, on his certificate, be allowed, and paid out of the Territorial treasury, as other demands against the Territory.

[Compiled Statutes of Montana, 1887, p. 487.]

Sections 459 and 460 relate to offer of rewards for fugitive criminals from Montana.

## FORMS.

[No. 1. — *Requisition.*]

## STATE OF MONTANA.

## EXECUTIVE DEPARTMENT.

*The Governor of the State of Montana to his Excellency the Governor of*

WHEREAS, it appears by the \_\_\_\_\_ hereunto annexed, which I certify to be authentic, and in accordance with the laws of this State, that \_\_\_\_\_ stand charged with the crime of \_\_\_\_\_, committed in the County of \_\_\_\_\_, in this State, which I certify to be a felony under the laws of this State, and it having been represented and satisfactorily shown to me that the said \_\_\_\_\_, since the commission of said offence fled from the justice of this State and now \_\_\_\_\_ fugitive from the justice thereof, and may have taken refuge in the \_\_\_\_\_;

Now, therefore, pursuant to the provisions of the Constitution and laws of the United States in such case made and provided, I do hereby request that the said \_\_\_\_\_ be apprehended and delivered to \_\_\_\_\_, who is hereby appointed the agent of this State, to be by him conveyed to the State of Montana, there to be dealt with in accordance with law.

In testimony whereof, I have hereunto subscribed my hand, and caused the Seal of the State of Montana to be affixed, at Helena, the Capital, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 189 \_\_\_\_\_.

By the Governor,

\_\_\_\_\_,

*Secretary of the State of Montana.*

[No. 2. — *Agent's Warrant.*]

## STATE OF MONTANA.

## EXECUTIVE DEPARTMENT.

\_\_\_\_\_, *Governor of the State of Montana, to all to whom these presents shall come, greeting.*

KNOW YE, that I do hereby appoint  
agent on the part of the State of Montana, to proceed to the  
, for the purpose of demanding and receiving from the proper authorities of said

, fugitive from justice  
from the State of Montana, charged with the crime of  
, the same being a felony under the laws of this  
State.

And I do hereby authorize and direct the said  
to demand and receive the said  
and convey to the State of Montana, and deliver  
to the Sheriff of the County of  
to be dealt with in accordance with law.

In testimony whereof, I have hereunto subscribed my hand, and caused the Seal of the State of Montana to be affixed, at Helena, the Capital, this \_\_\_\_\_ day of \_\_\_\_\_,  
A. D. 189 .

By the Governor,

\_\_\_\_\_,  
*Secretary of State.*

[No 3. — *Rendition Warrant.*]

## STATE OF MONTANA.

## EXECUTIVE DEPARTMENT.

\_\_\_\_\_, *Governor of the State of Montana, to any Sheriff, Deputy Sheriff, or Constable in the State of Montana.*

WHEREAS, a requisition from the Governor of the  
has been made upon me for the surrender of

, fugitive from justice from said  
 , charged with the crime of  
 as appears by a copy of the complaint and other papers filed in  
 the office of the Governor of the State of Montana, and duly  
 authenticated ;

Now, therefore, I do command you to apprehend the said  
 , wherever may be found in this  
 State, and, upon payment of all legal costs and charges, deliver  
 to , the agent of the Governor of  
 the , in order that he may be conveyed  
 to the said , to be there tried for the  
 crime charged against him. And of this warrant, with your pro-  
 ceedings thereon, make due return to this office.

In testimony whereof, I have hereunto subscribed my hand, and  
 caused the Seal of the State of Montana to be affixed, at Helena,  
 the Capital, this day of , A. D. 189 .

By the Governor,

\_\_\_\_\_,

*Secretary of the State of Montana.*

## NEBRASKA.

The statutes and rules of practice in Nebraska are set forth in  
 the following circular : —

### EXECUTIVE DEPARTMENT.

#### LAWS AND REGULATIONS IN REGARD TO THE EXTRADITION OF FUGITIVES FROM JUSTICE.

EXECUTIVE OFFICE, LINCOLN, 189.

THE following extracts from the laws of the United States, and  
 the Criminal Code of this State, and regulations relative to the ap-  
 prehension and delivery of fugitives from justice, are published for  
 the information of persons interested.

SECTION 5278. Whenever the executive authority of any State or  
 Territory demands any person as a fugitive from justice, of the

executive authority of any State or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the Governor or chief magistrate of the State or Territory from whence the person so charged has fled, it shall be the duty of the executive authority of the State or Territory to which such person has fled to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within six months from the time of the arrest, the prisoner may be discharged. All costs or expenses incurred in the apprehending, securing, and transmitting such fugitive to the State or Territory making such demand, shall be paid by such State or Territory.

[Revised Statutes of the United States, title lxvi. — Extradition.]

SECTION 330. When an affidavit shall be filed before any judge of a district court, or any judge of probate or police court, or any justice of the peace, within this State, setting forth that any person charged with the commission of any criminal offence against the laws of any other State or any of the Territories of the United States, and which, if the act has been committed in this State, would, by the laws thereof, have been a crime, is at the time of filing such affidavit within the county where the same may be filed, it shall be lawful, and it is hereby made the duty of such judge or justice of the peace to issue his warrant, directed to the sheriff or any constable of the county, commanding him forthwith to arrest and bring before the officer issuing such writ the person so charged.

SECT. 331. When the person arrested, as provided in the last preceding section, shall be brought before the officer issuing such warrant, it shall be lawful, and it is hereby made the duty of such officer to hear and examine such charge, and upon proof by him adjudged to be sufficient, to commit such person to the jail of the county in which such examination shall take place, or cause such person to be delivered to some suitable person, to be removed to the proper place of prosecution.

**SECT. 832.** Whenever any person is committed to jail by any judge or justice of the peace, by either of the provisions of the preceding section, it shall be the duty of such judge or justice of the peace forthwith to give notice, by letter or otherwise, to the sheriff of the county in which such offence shall have been committed, or to the person injured by such offence, or to the proper authorized agent or officer; and no person so committed shall be delayed longer in jail than necessary to allow a reasonable time to the person so notified, after he shall have received such notice, to apply for and obtain the proper requisition for the person so committed.

**SECT. 833.** Whenever a demand is made upon the Governor of this State by the executive of any other State or Territory, in any case authorized by the Constitution and laws of the United States, for the delivery of any person charged in such State or Territory with any crime, if such person is not held in custody or under bail to answer for any offence against the laws of the United States or of this State, he shall issue his warrant under the seal of the State, authorizing the agent who makes the demand, either forthwith or at such time as may be designated in the warrant, to take and transport such person to the line of this State, at the expense of such agent, and may also by such warrant require all peace officers to afford needful assistance in the execution thereof.

**SECT. 834.** The Governor of this State may, in any case authorized by the Constitution and laws of the United States, appoint agents to demand of the executive authority of any foreign government any fugitive from justice, charged with treason or felony, and the accounts of the agents appointed must be audited by the auditor and paid out of the State funds.

[Compiled Statutes, Nebraska, p. 716.]

The following Rules of Practice have been adopted by the Interstate Extradition Conference of 1887.

### **RULES OF PRACTICE.**

[HERE FOLLOW INTERSTATE RULES; SEE INTRODUCTION TO THIS  
APPENDIX.]

The following additional rules from this department must be observed: —

1. No account for expenses will be allowed unless the fugitive has been returned to the proper county in this State for trial.

2. Each bill must specify all the items of expenditure, accompanied, when possible, with the proper vouchers. When payment for services is made to officers in other States, their receipts must be appended, and the whole account properly sworn to.

3. The compensation of agents is limited to the refunding of the actual expenses incurred, and three dollars a day when in actual service; that of assistants to two dollars per day. No compensation or expenses will be allowed an assistant when but one prisoner is returned.

4. No claims will be allowed for compensation or otherwise which may arise after the prisoner has been returned to the county in which the crime was committed.

5. The State will not be responsible for expenses incurred in procuring the requisition, or before the requisition is issued.

6. The agent's commission should always be returned to the executive office, with a brief history of its execution written upon the back, like an officer's return upon a writ, and should be accompanied by a receipt from the jailer or other officer to whom the fugitive was delivered to await his trial.

7. The warrant issued by the Governor for the arrest and delivery of any person for whom a requisition has been made upon the executive of this State, should be returned to this office by the officer making the arrest, with his action written in full thereon.

\_\_\_\_\_,  
Governor.

## FORMS.

### [No 1.—*Requisition.*]

#### STATE OF NEBRASKA.

##### EXECUTIVE DEPARTMENT.

*The Governor of the State of Nebraska to his Excellency the Governor of the State of*

WHEREAS, it appears by \_\_\_\_\_, duly authenticated in accordance with the laws of this State, that \_\_\_\_\_ stand charged with the crime of \_\_\_\_\_ committed in the County of \_\_\_\_\_, in said State, and it has been represented to me

that he ha fled from this State as a fugitive from justice, and may have taken refuge in the State of .

Now, therefore, pursuant to the provisions of the Constitution and laws of the United States, in such case made and provided, I do hereby require that the said be apprehended and delivered to , who is hereby authorized to receive and convey to the State of Nebraska, there to be dealt with according to law.

In testimony whereof, I have hereunto subscribed my name and affixed the Great Seal of the State at the city of Lincoln, this day of , in the year of our Lord one thousand eight hundred and , the year of the State, and of the Independence of the United States the one hundred and .

By the Governor,

\_\_\_\_\_,  
Secretary of State.

[No. 2. — Agent's Warrant.]

## STATE OF NEBRASKA.

### EXECUTIVE DEPARTMENT.

*The Governor of the State of Nebraska, to all to whom these presents shall come, greeting.*

WHEREAS, it appears by information duly authenticated, that stand charged with the crime of , and it has been represented to me that ha fled from the jurisdiction of this State, and taken refuge within the limits of the State of ;

And, whereas, agreeably to a provision of the Constitution, and an Act of Congress passed on the twelfth day of February, in the year of our Lord one thousand seven hundred and ninety-three, I have made application to his Excellency the Governor of the State of , for the delivery of the said , as a fugitive from justice ;

Therefore, in the name and by the authority of the State of Nebraska, by these presents I do appoint and commission ,



agent, on the part of this State, for the purpose of bringing the said \_\_\_\_\_ into this State, having jurisdiction of the crime aforesaid, whenever the Governor of the said State of \_\_\_\_\_ shall cause \_\_\_\_\_ to be delivered up agreeably to the requisition aforesaid.

These are, therefore, to request and require all persons to permit the said \_\_\_\_\_ to receive and secure the said \_\_\_\_\_, and bring \_\_\_\_\_ unmolested into this State, having jurisdiction of said crime. The said agent peaceably and lawfully behaving, he, the said \_\_\_\_\_, agent as aforesaid, being hereby commanded him, the said \_\_\_\_\_, to hold in safe custody until delivered by due course of law.

In testimony whereof, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Nebraska. Done at Lincoln, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and ninety-\_\_\_\_\_, the \_\_\_\_\_ year of the State, and of the Independence of the United States the one hundred and \_\_\_\_\_.

By the Governor,

\_\_\_\_\_,  
Secretary of State.

[No. 3. — *Rendition Warrant.*]

STATE OF NEBRASKA.

To \_\_\_\_\_, Agent of the State of \_\_\_\_\_.

WHEREAS, \_\_\_\_\_, Governor of the State of \_\_\_\_\_, has demanded of the Governor of this State \_\_\_\_\_, charged with the crime of \_\_\_\_\_, as a fugitive from justice from said State of \_\_\_\_\_, and complied with the requisites in that case made and provided;

Now therefore, I, \_\_\_\_\_, Governor, in the name and by the authority of the State of Nebraska, do issue this my warrant, and authorize you to forthwith arrest the aforesaid \_\_\_\_\_, anywhere within the limits of this State, and transport \_\_\_\_\_ the said \_\_\_\_\_, to the line of this State, he the said \_\_\_\_\_, paying all fees and charges for the arrest of the said \_\_\_\_\_.

And I do hereby command all sheriffs, constables, and other officers in this State, to whom this warrant may be shown, to aid



executive of this State, on the requisition of the executive authority of the State or Territory in which he committed the offence, unless he give bail as provided in the next section, or until he be legally discharged.

4537. SECT. 657. The magistrate may admit the person arrested to bail by recognizance with sufficient securities, and in such sum as he may deem proper for his appearance before him at a time specified in the recognizance, and for his surrender to be arrested upon the warrant of the Governor of this State.

4538. SECT. 658. Immediately upon the arrest of the person charged, the magistrate shall give notice to the district attorney of the district of the name of the person and the cause of the arrest.

4539. SECT. 659. The district attorney shall immediately thereafter give notice to the executive authority of the State or Territory, or to the prosecuting attorney, or presiding judge of the criminal court of the city or county, within the State or Territory having jurisdiction of the offence, to the end that a demand may be made for the arrest and surrender of the person charged.

4540. SECT. 660. The person arrested shall be discharged from custody or bail, unless before the expiration of the time designated in the warrant or recognizance he be arrested under the warrant of the Governor of this State.

4541. SECT. 661. The magistrate shall make return of his proceedings to the next district court of the county, which shall thereupon inquire into the cause of the arrest and detention of the person charged, and if he be in custody, or the time of his arrest have not elapsed, the court may discharge him from detention, or may order his recognizance of bail to be cancelled, or may continue his detention for a longer time, or may readmit him to bail, to appear and surrender himself within a time to be specified in the recognizance.

[General Statutes of Nevada, 1885, chap. xxi. pp. 1009, 1010.]

### APPLICATION FOR REQUISITION.

EXECUTIVE DEPARTMENT, GOVERNOR'S OFFICE.

CARSON CITY, NEVADA,

189

To \_\_\_\_\_, *Esq.*, *District Attorney*,  
*County.*

SIR, — As delay and expense sometimes arise from the imperfection of papers on which requisitions on the governors of other

States and Territories are requested, I deem it prudent to submit the following

### REGULATIONS.

In making an application for a requisition, make out and forward the following papers, to wit:—

*First.* Two properly authenticated copies of the complaint or indictment upon which the fugitive is sought to be returned and prosecuted.

*Second.* An affidavit (in duplicate) of the prosecutor, or the district attorney of the county wherein the public offence is alleged to have been committed, setting forth the essential facts of the charge against the defendant; that he has fled from the justice of this State; and where he is known or believed to be; and

*Third.* A succinct, formal application, by the prosecutor or district attorney, for the issuance of a requisition.

Great care should be taken in preparing all these papers, and it is specially requisite that “the facts stated in the complaint or indictment constitute a public offence.”

Applications should be made as soon as practicable after flight, and not upon *stale* affidavits.

Very respectfully submitted.

\_\_\_\_\_,

Governor.

### FORMS.

[No. 1. — *Requisition.*]

#### STATE OF NEVADA.

#### EXECUTIVE DEPARTMENT.

\_\_\_\_\_, Governor of the State of Nevada, to his Excellency, the Governor of \_\_\_\_\_.

WHEREAS, it appears by the annexed \_\_\_\_\_, which I certify to be authentic and duly authenticated in accordance with the laws of this State, that \_\_\_\_\_ stand charged with the crime of \_\_\_\_\_, committed in the County of \_\_\_\_\_, in this State, and it has been represented and satisfactorily shown to me that \_\_\_\_\_ ha fled from the justice of this State, and ha taken refuge in the \_\_\_\_\_ of \_\_\_\_\_;

Now, therefore, pursuant to the provisions of the Constitution and laws of the United States, in such cases made and provided, I do hereby request that the said \_\_\_\_\_ be apprehended and delivered to \_\_\_\_\_, who is hereby authorized to receive and convey \_\_\_\_\_ to the State of Nevada, here to be dealt with according to law. The State not to be liable for any expense incurred in the pursuit, arrest, and return of said fugitive.

In testimony whereof, I have hereunto set my hand and caused to be affixed the Great Seal of the State.

Done at the city of Carson, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord, one thousand eight hundred and ninety-\_\_\_\_\_.

\_\_\_\_\_  
Governor of Nevada.

By the Governor,

\_\_\_\_\_,  
Secretary of State.

By \_\_\_\_\_,  
Deputy.

[No. 2. — Agent's Warrant.]

STATE OF NEVADA.

EXECUTIVE DEPARTMENT.

CARSON CITY, 189 .

WHEREAS, I, \_\_\_\_\_, Governor of the State of Nevada, have this day issued a requisition upon the Governor of the \_\_\_\_\_ of \_\_\_\_\_, for the arrest and delivery to the authorized agent of this State, of \_\_\_\_\_, who stands charged with the crime of \_\_\_\_\_, alleged to have been committed in the County of \_\_\_\_\_, in this State, and who it is alleged has fled from the justice of this State, and is believed to be in the said \_\_\_\_\_ of \_\_\_\_\_;

Therefore, I do hereby authorize and appoint, as the agent of this State, \_\_\_\_\_, to receive from the authorities of the said \_\_\_\_\_ of \_\_\_\_\_, if arrested therein, the said \_\_\_\_\_, and return him to this State, and deliver him to the sheriff of \_\_\_\_\_ County, to be dealt with according to law.

In testimony whereof, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Nevada. Done at Carson City, Nevada, this                      day of                      , A. D. 189   .

\_\_\_\_\_,  
Governor.

By the Governor,  
\_\_\_\_\_,  
Secretary of State.

[No. 3.— *Notice of Appointment of Agent.*]

STATE OF NEVADA.

EXECUTIVE DEPARTMENT.

*To all to whom these presents shall come:*

Know ye, that I have authorized and empowered, and by these presents do authorize and empower                      to take and receive from the authorities of the                      of                      , fugitive from justice, and convey                      to the State of Nevada, there to be dealt with according to law.

In witness whereof, I have hereunto set my hand and affixed the Great Seal of the State, at the city of Carson, this day of                      , in the year of our Lord one thousand eight hundred and ninety-                      .

\_\_\_\_\_,  
Governor of Nevada.

By the Governor,  
\_\_\_\_\_,  
Secretary of State.  
By \_\_\_\_\_,  
Deputy.

[No. 4.— *Rendition Warrant.*]

STATE OF NEVADA.

EXECUTIVE DEPARTMENT.

CARSON CITY,                      189   .

WHEREAS, the Honorable,                      , Governor of the  
of                      , has issued his requisition, in the name

and by the authority of the \_\_\_\_\_ of \_\_\_\_\_, and in virtue of the rights and privileges secured and guaranteed by the Constitution and laws of the United States, alleging that one \_\_\_\_\_ stands charged with the crime of \_\_\_\_\_, committed in the County of \_\_\_\_\_, State of \_\_\_\_\_; and that the said \_\_\_\_\_ has fled the said State of \_\_\_\_\_, and is believed to be within the limits of the State of Nevada, and demanding and requiring that the said \_\_\_\_\_ be delivered up to the justice of the State of \_\_\_\_\_ from which he has fled, and has appointed and constituted \_\_\_\_\_ as the agent of the State of \_\_\_\_\_, to receive and convey back the said fugitive.

Now, therefore, the State of Nevada, to any sheriff, constable, or officer of the peace within said State; you are hereby authorized and commanded to arrest, imprison, and detain the said \_\_\_\_\_, wherever he may be found in the State of Nevada, and to deliver him up to the said \_\_\_\_\_, agent as aforesaid, to be conveyed back to the \_\_\_\_\_ of \_\_\_\_\_, from which he has so as aforesaid fled.

Witness my hand and the Seal of State, at Carson City, this  
day of \_\_\_\_\_ A. D. 189 .

\_\_\_\_\_  
*Governor.*

By the Governor,

\_\_\_\_\_,  
*Secretary of State.*

## NEW HAMPSHIRE.

**SECTION 1.** When any person in this State is charged with an offence committed in another State, and is liable by the laws of the United States to be delivered over upon demand of the executive of such State, any court or justice may, upon complaint on oath setting forth the offence and other matters necessary to bring the case within the law, issue a warrant to bring the person so charged before him or some other justice, to answer such complaint.

**SECT. 2.** If upon examination there is reasonable cause to be-

lieve that the complaint is true, and that such person may be lawfully demanded of the executive of this State, he shall, if charged with a capital offence, be committed to jail, there to be detained until a day so appointed as to allow a reasonable time to obtain the warrant of such executive.

SECT. 3. If such person is charged with an offence not capital, the court or magistrate may order him to recognize, with sufficient sureties, to appear at a day so appointed, and, if he fails to recognize, may commit him to jail, there to be detained not exceeding thirty days, unless sooner discharged by due course of law.

SECT. 4. If the person so recognized or committed appears before the court or magistrate upon the day ordered, he shall be discharged, unless he is demanded by some person authorized by the warrant of the executive to receive him.

SECT. 5. Any person authorized by warrant of the executive may take such offender into custody at any time, whether recognized, committed, or discharged, and such taking shall be a discharge of the recognizance, if any, and shall not be deemed an escape.

SECT. 6. The complainant in every such case shall pay all the actual costs and charges, and for the support in jail of any person committed as aforesaid at the rate of two dollars and fifty cents per week, and shall advance the money therefor from time to time, or give to the jailer satisfactory security therefor. If the complainant neglects for twenty-four hours after he is required by the jailer to give such security or advance such money, the jailer may discharge him.

SECT. 7. When a demand is made upon the Governor by the executive of any other State, for the delivery over of any person charged in such State with any crime, the Attorney-General, or any other prosecuting officer, when required by the Governor, shall ascertain and report to the Governor all material facts known relating to the case, and especially whether he is held in custody or is under recognizance to answer for any offence against the laws of the United States, or of this State, or by force of any civil process, and also whether such demand is made conformably to law, so that such person ought to be delivered up.

SECT. 8. If the Governor is satisfied that the demand is conformable to law and ought to be complied with, he shall issue his warrant, under the seal of the State, authorizing the agent who



shall make such demand, either forthwith or at such time as shall be designated in the warrant, to take and transport such person to the line of the State, at the expense of such agent, and shall also, by such warrant, require the civil officers within this State to afford all needful assistance in the execution thereof.

SECT. 9. When any offender is apprehended in any neighboring State, and it may be necessary to carry him through this State to the place where the offence was committed, any justice, upon application and proof that lawful process has issued against such offender, shall issue a warrant under his hand and seal, directed to any sheriff or his deputy, or to any person by name who shall be sworn to the faithful performance of his duty, authorizing such conveyance.

SECT. 10. Such person or officer shall cause such offender to be conveyed to the line of this State next to the State where the offence was committed, there to be delivered to some proper officer ready to receive him; and all persons to whom such warrant may be directed are required to obey such order, upon payment or tender of the lawful fees therefor.

SECT. 11. Any sheriff, deputy-sheriff, constable, or other officer of justice, of any neighboring State, with his assistants, in the execution of any lawful process issuing from and returnable to any court in such State, may pass himself, and convey such persons or things as he may have in his custody by virtue of such lawful process, through this State, in as full and ample a manner as any officer of this State might do.

SECT. 12. If any person shall assault or obstruct any officer or his assistant, passing through this State in the execution of any such process, he shall be liable to the same punishment as if such person were an officer of this State.

[General Laws of New Hampshire, 1878, chap. cclxiv. pp. 599, 600.<sup>1</sup>]

### APPLICATIONS FOR REQUISITIONS.

The rules adopted by the Interstate Conference, 1887 (see introduction to this Appendix), are in force in New Hampshire. In reference to them, the Secretary of State uses the following circular letter: —

<sup>1</sup> The same provisions are found in the General Statutes, 1867, chap. 246; Compiled Statutes, 1853, chap. 238; Revised Statutes, 1842, chap. 223.

## STATE OF NEW HAMPSHIRE.

SECRETARY'S OFFICE,

CONCORD,

, 189 .

The foregoing Rules of Practice in extradition cases were prepared by the delegates to the Interstate Extradition Conference, appointed by the governors of the several States and Territories, and assembled in the City of New York in August, 1887, and recommended by them to be used in all cases of interstate extradition.

Blank requisitions, warrants, agent's authority, and indorsements are kept in this office.

The Governor orders that no requisition be issued unless the application is made by the attorney-general or the solicitor of the county in which the offence was committed, nor unless the application is in duplicate original papers or certified copies thereof.

\_\_\_\_\_,  
Secretary of State.

The following blank form is furnished for applications for requisitions : —

## STATE OF NEW HAMPSHIRE.

ss.

A. D. 18 .

*To his Excellency, the Governor :*

SIR, — I have the honor to request that you issue a requisition upon the Governor of the \_\_\_\_\_ of \_\_\_\_\_, for the extradition of \_\_\_\_\_, who stands charged by \_\_\_\_\_ with the crime of \_\_\_\_\_, committed in the County of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_\_, and who, to avoid prosecution, fled from the jurisdiction of this State and is now a fugitive from justice, and, as I am informed, is within the jurisdiction of said \_\_\_\_\_ of \_\_\_\_\_.

I hereby certify that, in my opinion, the ends of public justice require that the alleged criminal be brought to this State for trial at the public expense, and that I am willing such expense shall be a charge on the county in which the crime was committed, to wit, the County of \_\_\_\_\_.

I also certify that I have carefully examined into the facts, and verily believe that there is sufficient evidence to secure a conviction of the said fugitive.

I designate and recommend \_\_\_\_\_, a public officer, viz., \_\_\_\_\_, as a proper person to be appointed agent of the State, and certify that he has no personal interest in the arrest and return of the fugitive other than that of a proper performance of official duty.

I am not aware of, and verily believe there never has been, any former application for a requisition for the same person, for the same offence, which is the basis of this application.

I am not aware and verily believe the said fugitive is not now under either civil or criminal arrest.

I further certify that the requisition for his extradition is made in good faith, with the sole intent to prosecute him for said crime, and not secure his return to this State to afford opportunity to serve him with civil process, nor for any other purpose.

And I further certify that all papers in duplicate have been compared with each other, and are in all respects exact counterparts.

And I further certify that the offence charged against the said fugitive is a \_\_\_\_\_, and that said offence and punishment therefor is defined in \_\_\_\_\_.

Application for the arrest and return of the said fugitive has not sooner been made because of \_\_\_\_\_.

Very respectfully,

\_\_\_\_\_,  
Solicitor for

## FORMS OF WARRANTS.

[No. 1. — *Requisition.*]

### STATE OF NEW HAMPSHIRE.

*The Governor of New Hampshire, to the Governor of*

WHEREAS, it appears by \_\_\_\_\_, which hereunto annexed, and which I certify to be authentic and duly authenticated in accordance with the laws of this \_\_\_\_\_, that \_\_\_\_\_ stand charged with the crime of \_\_\_\_\_, which I certify to be \_\_\_\_\_ crime under the laws of this \_\_\_\_\_, committed in the

County of \_\_\_\_\_, in this \_\_\_\_\_, and it having been represented to me that he has fled from the justice of this \_\_\_\_\_, and may have taken refuge in the \_\_\_\_\_;

Now, therefore, pursuant to the provisions of the Constitution and the laws of the United States, in such case made and provided, I do hereby require that the said \_\_\_\_\_ be apprehended and delivered to \_\_\_\_\_, who hereby authorized to receive and convey \_\_\_\_\_ to the \_\_\_\_\_ of \_\_\_\_\_, there to be dealt with according to law.

In witness whereof, I have hereunto signed my name, and affixed the Seal of the \_\_\_\_\_, at the Capitol, in \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and ninety-\_\_\_\_\_.

By the Governor,  
\_\_\_\_\_.

[No. 2.—*Rendition Warrant.*]

STATE OF NEW HAMPSHIRE.

*The Governor of New Hampshire, to \_\_\_\_\_, and the Sheriffs and Under-Sheriffs and other officers of and in the several counties of this \_\_\_\_\_.*

WHEREAS, it has been represented to me by the Governor of \_\_\_\_\_, that \_\_\_\_\_ stand charged with the crime of \_\_\_\_\_, which he certifies to be crime under the laws of said \_\_\_\_\_, committed in the County of \_\_\_\_\_, in said \_\_\_\_\_, and has taken refuge in the \_\_\_\_\_, and the said Governor of \_\_\_\_\_, having, in pursuance of the Constitution and laws of the United States, demanded of me that I shall cause the said \_\_\_\_\_ to be arrested and delivered to \_\_\_\_\_, who is duly authorized to receive \_\_\_\_\_ into his custody and convey \_\_\_\_\_ back to the said \_\_\_\_\_;

And whereas, the said representation and demand is accompanied by \_\_\_\_\_, whereby the said \_\_\_\_\_ shown to have been duly charged with the said crime, and with having fled from said \_\_\_\_\_, and taken refuge in the \_\_\_\_\_, which \_\_\_\_\_ duly certified by the said Governor of \_\_\_\_\_ to be authentic and duly authenticated;

Therefore, you are required to arrest and secure the said \_\_\_\_\_, wherever \_\_\_\_\_ may be found within the \_\_\_\_\_, and afford \_\_\_\_\_ such opportunity to sue out a writ of *habeas corpus* as is prescribed by the laws of this \_\_\_\_\_, and to thereafter deliver \_\_\_\_\_ into the custody of the said \_\_\_\_\_ from which \_\_\_\_\_ fled, pursuant to the said requisition; and also to return this warrant and make return to the Governor of \_\_\_\_\_, within thirty days from the date hereof, of all your proceedings had thereunder, and of all facts and circumstances relating thereto.

In witness whereof, I have hereunto signed my name and affixed the \_\_\_\_\_ Seal of the \_\_\_\_\_, at the Capitol, in the \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and ninety-\_\_\_\_\_.  
\_\_\_\_\_

By the Governor,  
\_\_\_\_\_.

[No. 3. — *Agent's Warrant.*]

STATE OF NEW HAMPSHIRE.

*The Governor of New Hampshire, to all to whom these presents shall come.*

Know YE, that I have authorized and empowered, and by these presents do authorize and empower, \_\_\_\_\_ to take and receive from the proper authorities of the \_\_\_\_\_, \_\_\_\_\_, fugitive from justice, and convey \_\_\_\_\_ to the \_\_\_\_\_ of \_\_\_\_\_, there to be dealt with according to law.

In witness whereof, I have hereunto signed my name and affixed the \_\_\_\_\_ Seal of the \_\_\_\_\_, at the Capitol, in the \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and ninety-\_\_\_\_\_.  
\_\_\_\_\_

By the Governor,  
\_\_\_\_\_.

[*Indorsement on Agent's Warrant.*]

I, \_\_\_\_\_, do hereby certify, that I have this \_\_\_\_\_ day of \_\_\_\_\_, 189 \_\_\_\_\_, honored the requisition of the Governor of \_\_\_\_\_, for the surrender of \_\_\_\_\_, fugitive from the \_\_\_\_\_.

justice of said last-named \_\_\_\_\_, and have issued a warrant for delivery to \_\_\_\_\_, the agent of said \_\_\_\_\_ of \_\_\_\_\_, whose authority to receive said fugitive is annexed hereto.

In witness whereof, I have hereunto signed my name, and affixed the Seal of the \_\_\_\_\_, at the Capitol, in the \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and ninety- \_\_\_\_\_.

By the Governor,  
\_\_\_\_\_.

## NEW JERSEY.

107. In any case where a person charged in this State with any crime shall flee from justice and be found in another State, and the attorney-general or the prosecutor of the pleas for any county where such person is so charged shall recommend to the Governor or person administering the government of this State, to demand the said fugitive, so that he may be brought into this State for trial; and the said fugitive shall, on the demand of the executive authority of this State, be delivered up and removed to this State, the expense of such removal being first ascertained to the satisfaction of the Governor or person administering the government, shall on warrant from him, be paid by the treasurer of this State, out of any moneys in the treasury not otherwise appropriated.

[Revision of the Statutes of New Jersey, 1877, p. 287.]

[Chapter LXXXIX.]

ASSEMBLY, NO. 147.

## STATE OF NEW JERSEY.

An act concerning fugitives from justice.

1. *Be it enacted by the Senate and General Assembly of the State of New Jersey.* That it shall be unlawful to take, or cause or

procure to be taken, or to aid or abet in taking any person or persons from out of this State, whether with or without the consent of such person or persons, for the purpose of answering any criminal charge that may have been preferred against such person or persons in any other State, except upon the warrant or mandate of the Governor of this State.

2. *And be it enacted*, that if the Governor shall be satisfied that the facts in the premises justify the granting of an application for extradition, he shall thereupon issue his warrant or mandate to the sheriffs, under-sheriffs, detectives, or constables of the several counties of the State, directing said officers to cause the said person or persons to be apprehended and delivered into the custody of the officer or agent appointed by the Governor of the State making such requisition to receive such person or persons.

3. *And be it enacted*, that on receiving said warrant or mandate from the Governor as aforesaid, it shall be the duty of any sheriff or other said officer to whom it may be delivered to use all due diligence to cause said person or persons mentioned therein, if found in his county, to be arrested, if not already arrested, and to be delivered into the custody of the officer or agent aforesaid.

4. *And be it enacted*, that it shall then be lawful for such officer or agent aforesaid to take such person or persons out of this State, giving a receipt for the body or bodies of such person or persons to the said officer, who shall transmit the same to the prosecutor of the pleas, who shall forward the same to the Secretary of State.

5. *And be it enacted*, that it shall be lawful for any police justice, recorder, or justice of the peace, on satisfactory evidence under oath being presented to him that application has been made, or is about to be made, by the authorities of any other State to the Governor of this State for the extradition of any person or persons within the jurisdiction of such magistrate, to issue a warrant or warrants for the arrest of such person or persons and to commit such person or persons to the county jail, or to take bail for his or their appearance from day to day for a period not to exceed thirty days from the date of the arrest of said person or persons; *provided*, that any person or persons who may be so arrested and committed to the county jail shall not be detained or imprisoned for a longer period than thirty days.

6. *And be it enacted*, that any agent or officer or other person appointed by or representing the authorities of any other State who

shall violate any of the provisions of this act, or any person or persons who shall aid or abet such agent, officer, or other person in the violation of any of the provisions of this act, shall be guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine of not less than two hundred dollars and not to exceed one thousand dollars, or by imprisonment of not less than four months and not to exceed two years, or both, at the discretion of the court.

7. *And be it enacted*, that all acts and parts of acts inconsistent with the provisions of this act are hereby repealed, and that this act shall take effect immediately.

[Approved April 1, 1889.]

## FORMS.

[*No. 1. — Requisition.*]

### STATE OF NEW JERSEY.

#### EXECUTIVE DEPARTMENT.

\_\_\_\_\_, *Governor of the State of New Jersey, to his Excellency, the Governor of the State of* \_\_\_\_\_.

It appears by the annexed \_\_\_\_\_, duly authenticated in accordance with the laws of this State, that \_\_\_\_\_ stand charged with the crime of \_\_\_\_\_, committed in the County of \_\_\_\_\_, in said State, and it having been represented to me that \_\_\_\_\_ ha \_\_\_\_\_ fled from the justice of the State and ha taken refuge within the State of \_\_\_\_\_;

Now therefore, pursuant to the provisions of the Constitution and laws of the United States in such case made and provided, I do hereby request that the said \_\_\_\_\_ be delivered up to \_\_\_\_\_, who is duly authorized to receive and convey to the State of New Jersey, there to be dealt with according to law.

In testimony whereof, I have hereunto set my hand and caused the Great Seal of the State of New Jersey to be affixed at Trenton, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one



thousand eight hundred and ninety- , and of the Independence  
of the United States the one hundred and .

By the Governor,

\_\_\_\_\_,  
*Secretary of State.*

[No. 2. — *Certificate of Authentication.*]

STATE OF NEW JERSEY.

I, \_\_\_\_\_, Governor of the State of New Jersey, do hereby certify, that \_\_\_\_\_, Esquire, who hath signed the annexed certificate, and whose official seal is thereto annexed, was, at the doing thereof, and now is, Secretary of State of the State of New Jersey, duly appointed, commissioned, and sworn, and that full faith and credit are to be given to his official attestations; that the said signature is in the proper handwriting of the said \_\_\_\_\_, and the seal his seal of office, and that the said certificate is in due form of law and by the proper officer.

In testimony whereof, I have hereunto set my hand, and caused the Great Seal of the State of New Jersey to be hereunto affixed, at the city of Trenton, in said State, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and ninety- , and of the Independence of the United States the one hundred and .

By the Governor,

\_\_\_\_\_,  
*Secretary of State.*

[No. 3. — *Agent's Warrant.*]

STATE OF NEW JERSEY.

\_\_\_\_\_, Governor of the State of New Jersey, on behalf of the said State as executive authority thereof, doth hereby appoint \_\_\_\_\_ to receive into \_\_\_\_\_ custody \_\_\_\_\_, fugitive from justice from the State of New Jersey, being charged with the crime of \_\_\_\_\_, committed in the County of \_\_\_\_\_, requiring and authorizing him safely to keep and

deliver the said \_\_\_\_\_ to the keeper of the common jail in and for the County of \_\_\_\_\_, in the said State of New Jersey, there to be safely kept until delivered by due course of law.

Witness, the hand of the said Governor and the Great Seal of the State of New Jersey at Trenton, in said State, the day of \_\_\_\_\_, A. D. one thousand eight hundred and ninety- \_\_\_\_\_.

By the Governor,

\_\_\_\_\_,  
Secretary of State.

[No. 4. — *Rendition Warrant.*]

STATE OF NEW JERSEY.

EXECUTIVE DEPARTMENT.

\_\_\_\_\_, Governor of the State of New Jersey, to the Sheriffs, Under-Sheriffs, Janitors, and Constables of the several Counties of said State, greeting.

WHEREAS, the executive authority of the State of \_\_\_\_\_ hath transmitted to the executive authority of the State of New Jersey \_\_\_\_\_, certified to be authentic, by which it appears that \_\_\_\_\_ charged with the crime of \_\_\_\_\_, and the said executive of \_\_\_\_\_, having made demand of the executive of the State of New Jersey for the rendition of \_\_\_\_\_, as fugitive from justice, and it appearing that the said \_\_\_\_\_ now in the State of New Jersey ;

These are therefore to authorize and require you, the said sheriffs, under-sheriffs, jailers, and constables, to cause the said \_\_\_\_\_ forthwith to be delivered to \_\_\_\_\_, agreeably to the said demand of the executive of the State of \_\_\_\_\_, and the receipt of the said \_\_\_\_\_ for the said \_\_\_\_\_ shall be your warrant for his delivery.

Witness, the hand of the said Governor and the Great Seal of the State of New Jersey at Trenton, in said State, the day of \_\_\_\_\_, A. D. one thousand eight hundred and ninety- \_\_\_\_\_.

By the Governor,

\_\_\_\_\_,  
Secretary of State.

## NEW MEXICO.

§ 837. Whenever a crime has been committed in this Territory and the perpetrator has escaped beyond the limits of the Territory, so that the ordinary process of law cannot be served upon him, it shall be the duty of any magistrate or coroner immediately to enter upon the due investigation and examination, and as soon as concluded he shall transmit to the Governor a certified copy of such examination.

§ 838. The Governor of the Territory, so soon as he receives such certified copy and ascertains in what State or Territory the accused is, shall, without delay, make a requisition upon the Governor of the State or Territory into which the accused has taken refuge, for his delivery to the authorities of this Territory.

§ 839. The Governor is authorized to pay the costs and expenses incurred in the apprehension and transportation to this Territory of such accused from the Territorial funds.

§ 840. The auditor of public accounts shall approve, and the treasurer of the Territory shall pay, any sum which the Governor may approve and order under the provisions of this act from any Territorial funds not otherwise appropriated.

[Compiled Laws of New Mexico, 1884, title ix. chap. iv., p. 454.]

§ 2510. Any person charged in any State or Territory of the United States, with treason, felony, or other crime, and who shall escape from justice and be found in this Territory, shall be, on a requisition from the executive authority of the State or Territory from which he shall have escaped, delivered up by the Governor of this Territory, in order that he may be carried to the State or Territory that has jurisdiction of said crime.

§ 2511. Any justice of the peace or other authority shall have power to issue a process for the apprehension of any person thus charged, who shall have fled from justice and be found in this Territory.

§ 2512. The proceedings for the apprehension and imprisonment of any person charged with a criminal offence, shall be in all respects similar to those proceedings in our Code for the apprehension and imprisonment of a person charged with a criminal offence, with the exception, that an exemplified copy of the

accusation attached to other judicial proceedings had against him in the State or Territory in which he may have been charged to have committed the offence, shall be received as conclusive evidence before the justice.

§ 2513. If it should appear on the examination, that the person accused has committed the crime alleged, the justice, by a written order setting forth the accusation, shall confine him in jail for any time specified in the order that he may deem sufficient, in order that the arrest of the fugitive may be made by order of the executive of this Territory, upon a requisition of the executive authority of the State or Territory in which he shall have committed the offence, unless the accused shall give security, as provided in the following section, or until he shall be legally set at liberty.

§ 2514. It shall be the duty of the justice of the peace (unless the offence of which the fugitive is charged shall be proven to be an offence that merits capital punishment according to the laws of the State or Territory in which the offence was committed), to admit the person arrested to bail under a bond with sufficient securities, in any sum that the justice may deem sufficient for his appearance before him at the time specified in the bond given, and to deliver himself up for the purpose of being arrested upon the requisition of the Governor of this Territory.

§ 2515. The person so arrested shall be set at liberty under the bond, unless that before the time designated in the order or bond, he shall be arrested under a process from the Governor of this Territory.

§ 2516. If the fugitive should be set at liberty under bonds, and shall fail to deliver himself up according to his bond, the justice shall endorse on his bond, "forfeited," signing his name to the same, and transmit it to the clerk of the district court by the first day of the next ensuing term, and a conditional judgment shall be rendered thereon, and proceedings had as in case of forfeited bonds in that court, the endorsement of the justice being presumptive evidence of the forfeiture.

§ 2517. At the expiration of the time specified in the process, the justice may set him at liberty, or remand him to jail until the following day, or may admit him to bail for his appearance and surrender as provided in section 2514; if he shall have given bond, and shall appear according to the bonds entered into, the justice may set him at liberty or may require him to give new bonds for his appearance and surrender at any future day.

[Compiled Laws of New Mexico, 1884, tit. xxxiv. chap. iii., p. 1158.]

WHEREAS, it appears from the annexed  
, which I certify to be authentic and duly au-  
thenticated in accordance with the laws of this Territory, that

stand charged with the crime of  
 , committed in the County of  
 in this Territory; and it having been represented and satisfac-  
 torily shown to me that he now fugitive from justice  
 and ha taken refuge in the of ;

Now, therefore, pursuant to the provisions of the Constitution  
 and laws of the United States, in such cases made and provided, I  
 do hereby request that the said be  
 apprehended and delivered to , as agent, who  
 is hereby authorized to receive and convey h m to the Territory  
 of New Mexico, here to be dealt with according to law.

In testimony whereof, I have hereunto set my hand and caused  
 the Great Seal of the Territory to be hereto affixed. Done at  
 Santa Fe, the Capital, this day of , in  
 the year one thousand eight hundred and ninety- , and of the  
 Independence of the United States the one hundred and .

\_\_\_\_\_,  
*Governor of New Mexico.*

By the Governor,

\_\_\_\_\_,  
*Secretary of the Territory.*

[No. 2. — *Agent's Warrant.*]

TERRITORY OF NEW MEXICO.

EXECUTIVE OFFICE.

To , *Agent, etc.*

WHEREAS, requisition upon the Governor of the of  
 has this day been issued, requesting the appre-  
 hension and delivery of , duly charged  
 with crime in the County of , committed in the year  
 one thousand eight hundred and ninety- , and who  
 now fugitive from justice, taking refuge in the  
 of ;

And whereas, you , were in said requisition duly authorized, as agent of the Territory, to receive and convey the said part above named to this Territory, to be dealt with according to law ;

Now, therefore, you, \_\_\_\_\_, agent as aforesaid, will, in due time after mandate shall have issued, proceed with due promptness and discretion to the proper place and officer, and make demand and receive the said part \_\_\_\_\_ above named, charged as aforesaid with crime, and convey and deliver to the sheriff of the County, at the county seat of the County having lawful jurisdiction of the said accused, charged with crime as aforesaid; and upon completion of the duties herein delegated and charged, you, the said agent, will, without delay, make return to this office of this paper, with a statement of your doings hereunder endorsed hereon.

In testimony whereof, I have hereunto set my hand and caused the Great Seal of the Territory to be hereto affixed. Done at Santa Fe, the Capital, this \_\_\_\_\_ day of \_\_\_\_\_, in the year one thousand eight hundred and ninety-\_\_\_\_\_.

\_\_\_\_\_,  
Governor of New Mexico.

By the Governor,

\_\_\_\_\_,  
Secretary of the Territory.

[No. 3. — Rendition Warrant.]

## TERRITORY OF NEW MEXICO.

### EXECUTIVE DEPARTMENT.

WHEREAS, it appearing from the requisition of his Excellency, the Governor of the \_\_\_\_\_ of \_\_\_\_\_, bearing date \_\_\_\_\_, and from \_\_\_\_\_ thereto attached, duly authenticated, that \_\_\_\_\_ stand charged with the crime of \_\_\_\_\_, committed in the County of \_\_\_\_\_, in the year \_\_\_\_\_, in said \_\_\_\_\_, and that said

fugitive \_\_\_\_\_ from justice and has taken refuge in this Territory;

And, whereas, the said requisition requests that the said \_\_\_\_\_ above named be apprehended and delivered to \_\_\_\_\_, who is the duly appointed agent authorized to receive and convey him, the said \_\_\_\_\_; to the \_\_\_\_\_ of \_\_\_\_\_, to be dealt with according to law;

Now, therefore, I, \_\_\_\_\_, Governor, do command any and every sheriff, in whose hands soever this writ may be placed, to arrest the said \_\_\_\_\_, and \_\_\_\_\_ safely keep and deliver to said \_\_\_\_\_, agent as aforesaid ;

Provided, however, that said part above named shall be afforded a reasonable opportunity to assert, before delivery as aforesaid, any legal rights he may have in the premises.

You, the said sheriff, will, without unnecessary delay, make return of this writ to the office of the Secretary of the Territory, with statement of your doings hereunder endorsed hereon.

In testimony whereof, I have hereunto set my hand and caused the Great Seal of the Territory to be hereto affixed. Done at Santa Fe, the Capital, this \_\_\_\_\_ day of \_\_\_\_\_, in the year one thousand eight hundred and ninety-\_\_\_\_\_, and of the Independence of the United States the one hundred and \_\_\_\_\_.

\_\_\_\_\_,  
Governor of New Mexico.

By the Governor,

\_\_\_\_\_,  
Secretary of the Territory.

#### NOTICE TO THE SHERIFF OR OTHER OFFICER MAKING THE ARREST.

Your attention is called to the following paragraph relating to fugitives demanded on requisitions, copied from the Revised Statutes of the United States, section 5278, to wit: "All costs or expenses incurred in the apprehending, securing, and transmitting such fugitive to the State or Territory making such demand, shall be paid by such State or Territory."

## NEW YORK.

#### FUGITIVES FROM ANOTHER STATE OR TERRITORY, INTO THIS STATE.

SECTION 827. A person charged in any State or Territory of the United States, with treason, felony, or other crime, who shall flee from justice and be found in this State, must, on demand of the executive authority of the State or Territory from which he fled, be



delivered up by the Governor of this State, to be removed to the State or Territory having jurisdiction of the crime.

SECT. 828. A magistrate may issue a warrant for the apprehension of a person so charged, who shall flee from justice and be found within this State.

SECT. 829. The proceedings for the arrest and commitment of the person charged are in all respects similar to those provided in this code for the arrest and commitment of a person charged with a public offence committed in this State; except that an exemplified copy of an indictment found, or other judicial proceeding had against him, in the State or Territory in which he is charged to have committed the offence, may be received as evidence before the magistrate.

SECT. 830. If, from the examination, it appear that the person charged has committed the crime alleged, the magistrate, by warrant reciting the accusation, must commit him to the proper custody in his county, for a time specified in the warrant, which the magistrate deems reasonable, to enable the arrest of the fugitive under the warrant of the executive of this State, on the requisition of the executive authority of the State or Territory in which he committed the offence, unless he give bail, as provided in the next section, or until he be legally discharged.

SECT. 831. A judge of the supreme court may admit the person arrested to bail, by an undertaking with sufficient sureties and in such sum as he deems proper, for his appearance before him at a time specified in the undertaking, and for his surrender to be arrested upon the warrant of the Governor of this State.

SECT. 832. Immediately upon the arrest of the person charged, the magistrate must give notice to the district attorney of the county, of the name of the person and the cause of his arrest.

SECT. 833. The district attorney must immediately thereafter give notice to the executive authority of the State or Territory, or to the prosecuting attorney or presiding judge of the criminal court of the city or county therein having jurisdiction of the offence, to the end that a demand may be made for the arrest and surrender of the person charged.

SECT. 834. The person arrested must be discharged from custody or bail, unless, before the expiration of the time designated in the warrant or undertaking, he be arrested under the warrant of the Governor of this State.

**SECT. 835.** The magistrate must return his proceedings to the next court of sessions of the county, which must thereupon inquire into the cause of the arrest and detention of the person charged ; and if he be in custody, or the time for his arrest have not elapsed, it may discharge him from detention, or may order his undertaking of bail to be cancelled, or continue his detention for a longer time, or readmit him to bail, to appear and surrender himself within a time specified in the undertaking.

**FUGITIVES FROM THIS STATE, INTO ANOTHER STATE OR TERRITORY.**

**SECT. 836.** When the Governor shall demand from the executive authority of a State or Territory of the United States, the surrender to the authorities of this State of a fugitive from justice, the accounts of the persons employed by him for that purpose must be paid out of the State treasury.

**SECT. 837.** No compensation, fee, or reward of any kind can be paid to or received by a public officer of this State, for a service rendered or expense incurred, in procuring from the Governor the demand mentioned in the last section, or the surrender of the fugitive, or for conveying him to this State, or detaining him therein.

[The Code of Criminal Procedure (chapter 442, Laws of 1881), as originally adopted. Sections 836 and 837 were repealed by chapter 360, Laws of 1882 ]

The above provisions of the Code of Criminal Procedure, as originally adopted, were amended by Chapter 638 of the Laws of 1886, which is as follows : —

**AN ACT** to amend sections eight hundred and twenty-seven, eight hundred and twenty-eight, eight hundred and thirty, and eight hundred and thirty-one, and to repeal section eight hundred and thirty-five of the Code of Criminal Procedure.

[Passed June 15, 1886, three-fifths being present.]

*The people of the State of New York, represented in Senate and Assembly, do enact as follows : —*

**SECTION 1.** Section eight hundred and twenty-seven of the code of criminal procedure is hereby amended so as to read as follows : —

**SECT. 827. 1.** It shall be the duty of the Governor in all cases where, by virtue of a requisition made upon him by the Governor of

another State or Territory, any citizen, inhabitant, or temporary resident of this State is to be arrested as a fugitive from justice (provided that said requisition be accompanied by a duly certified copy of the indictment or information from the authorities of such other State or Territory, charging such person with treason, felony, or other crime in such State or Territory), to issue and transmit a warrant for such purpose to the sheriff of the proper county or his under-sheriff, or in the cities of this State (except in the city and county of New York, where such warrant shall only be issued to the superintendent or any inspector of police), to the chiefs, inspectors, or superintendents of police, and only such officers as are above mentioned, and such assistants as they may designate to act under their direction, shall be competent to make service of or execute the same. The Governor may direct that any such fugitive be brought before him, and may for cause by him deemed proper revoke any warrant issued by him as herein provided. The officer to whom is directed and intrusted the execution of the Governor's warrant, must, within thirty days from its date, unless sooner requested, return the same and make return to the Governor of all his proceedings had thereunder, and of all facts and circumstances relating thereto. Any officer of this State, or of any city, county, town, or village thereof must, upon request of the Governor, furnish him with such information as he may desire in regard to any person or matter mentioned in this chapter.

2. Before any officer to whom such warrant shall be directed or intrusted shall deliver the person arrested into the custody of the agent or agents named in the warrant of the Governor of this State, such officer must, unless the same be waived as hereinafter stated, take the prisoner or prisoners before a judge of the Supreme Court, of any superior city court, or the presiding judge of a court of sessions, who shall, in open court if in session, otherwise at chambers, inform the prisoner or prisoners of the cause of his or their arrest, the nature of the process, and instruct him or them that if he or they claim not to be the particular person or persons mentioned in said requisition, indictment, affidavit, or warrant annexed thereto, or in the warrant issued by the Governor thereon, he or they may have a writ of *habeas corpus* upon filing an affidavit to that effect. Said person or persons so arrested may, in writing, consent to waive the right to be taken before said court or a judge thereof at chambers. Such consent or waiver shall be witnessed by the officer in-

trusted with the execution of the warrant of the Governor and one of the judges aforesaid or a counsellor-at-law of this State, and such waiver shall be immediately forwarded to the Governor by the officer who executed said warrant. If after a summary hearing as speedily as may be consistent with justice, the prisoner or prisoners shall be found to be the person or persons indicted or informed against, and mentioned in the requisition, the accompanying papers, and the warrant issued by the Governor thereon, then the court or judge shall order and direct the officer intrusted with the execution of the said warrant of the Governor to deliver the prisoner or prisoners into the custody of the agent or agents designated in the requisition and the warrant issued thereon, as the agent or agents upon the part of such State to receive him or them ; otherwise to be discharged from custody by the court or judge.

If upon such hearing the warrant of the Governor shall appear to be defective or improperly executed, it shall be by the court or judge returned to the Governor, together with a statement of the defect or defects, for the purpose of being corrected and returned to the court or judge, and such hearing shall be adjourned a sufficient time for the purpose, and in such interval the prisoner or prisoners shall be held in custody until such hearing be finally disposed of.

3. It shall not be lawful for any person, agent, or officer to take any person or persons out of this State upon the claim, ground, or pretext that the prisoner or prisoners consent to go, or by reason of his or their willingness to waive the proceedings afore described, and any officer, agent, person, or persons who shall procure, incite, or aid in the arrest of any citizen, inhabitant, or temporary resident of this State, for the purpose of taking him or sending him to another State, without a requisition first duly had and obtained, and without a warrant duly issued by the Governor of this State, served by some officer as in this section provided, and without, except in case of waiver in writing as aforesaid, taking him before a court or judge as aforesaid, unless in pursuance to the provisions of the following sections of this chapter, and any officer, agent, person, or persons who shall, by threats or undue influence, persuade any citizen, inhabitant, or temporary resident of this State to sign the waiver of his right to go before a court or judge as hereinbefore provided, or who shall do any of the acts declared by this chapter to be unlawful, shall be guilty of a felony, and upon conviction be sentenced to imprisonment in a State prison or penitentiary for the term of one year.

4. Any wilful violation of this act by any of the above-named officers shall be deemed a misdemeanor in office.

SECT. 2. Section eight hundred and twenty-eight of the code of criminal procedure is hereby amended so as to read as follows :—

SECT. 828. A magistrate may issue a warrant as a preliminary proceeding to the issuing of a requisition by the Governor of another State or Territory upon the Governor of this State for the apprehension of a person charged with treason, felony, or other crime, who shall flee from justice, and be found within this State.

SECT. 3. Section eight hundred and thirty of the code of criminal procedure is hereby amended so as to read as follows :—

SECT. 830. If from the examination under such warrant it appears probable that the person charged has committed the crime alleged, the magistrate, by warrant reciting the accusation, must commit him to the proper custody in his county for a time specified in the warrant, to enable an arrest of the fugitive to be made under the warrant of the Governor of this State, which commitment shall not exceed thirty days, exclusive of the day of arrest, on the requisition of the executive authority of the State or Territory in which he is charged to have committed the offence, unless he give bail, as provided in the next section, or until he be legally discharged.

SECT. 4. Section eight hundred and thirty-one of the code of criminal procedure is hereby amended so as to read as follows :

SECT. 831. Any judge of any court named in section eight hundred and twenty-seven may in his discretion admit the person arrested to bail by an undertaking with sufficient sureties and in such sum as he deems proper, for his appearance before him at a time specified in the undertaking, which must not be later than the expiration of thirty days from the date of arrest, exclusive of such date, and for his surrender, to be arrested upon the warrant of the Governor of this State.

SECT. 5. Section eight hundred and thirty-five of the code of criminal procedure is hereby repealed.

SECT. 6. This act shall take effect immediately.

[Laws of New York, 109 Session, 1886, pp. 915–917; chapter 638.]

The following rules, governing applications for requisitions, were adopted by Governor Hill.

## STATE OF NEW YORK.

## EXECUTIVE CHAMBER.

THE following rules will be observed by the Governor of the State of New York in reference to applications for requisitions on Governors of other States and Territories, and the Chief Justice of the Supreme Court of the District of Columbia (U. S. R. S. § 5278 ; R. S. relating to the District of Columbia, § 843).

The application must be made by the District Attorney of the county in which the offence was committed, and must be in duplicate original papers, except indictments, which must be certified copies.

The following must appear by the certificate of the District Attorney : —

A. The full name of the person for whom extradition is asked, together with the name of the agent proposed, to be accurately spelled, in roman capital letters, — for example, JOHN DOE.

B. That in his opinion the ends of public justice require that the alleged criminal be brought to this State for trial at the public expense, and that he is willing that such expense be a charge on the county in which the crime was committed.

C. That he believes he has sufficient evidence to secure a conviction of the fugitive.

D. That the person named as agent is a proper person, a public officer (naming his official position), and that he has no interest in the arrest of the fugitive.

E. If there has been any former application for a requisition for the same person growing out of the same transaction, it must be so stated, with an explanation of the reasons for a second request, together with the date of such application, as near as may be.

F. If the fugitive is known to be under either civil or criminal arrest, the fact of such arrest and the nature of the proceedings on which it is based must be stated.

G. That the application is not made for the purpose of enforcing the collection of a debt, or for any private purpose whatever, and that if the requisition applied for be granted, the criminal proceedings shall not be used for any of said objects.

H. That all papers in duplicate have been compared with each other and are, in all respects, exact counterparts.

I. Whether the offence charged is a felony or a misdemeanor, with a concise definition thereof, and a particular reference to the statute, giving chapter, title, article, page, and section, together with any amendments thereto, defining the offence and stating the punishment therefor.

J. When more than one year has elapsed since the commission of the crime, a full explanation must be given, and upon an application where no indictment has been found, the reasons therefor must be stated.

1. In cases of false pretences, embezzlement, or forgery, and all offences known as such prior to the enactment of the Penal Code, the affidavit of the principal complaining witness or informant that the application is made in good faith, for the sole purpose of punishing the accused, and that he does not desire or expect to use the prosecution for the purpose of collecting a debt, or for any private purpose, and will not directly or indirectly use the same for any of said purposes.

2. Proof by affidavit of *facts and circumstances* satisfying the executive that the alleged criminal has fled from the justice of the State, and is in the State on whose executive the demand is requested to be made, must be given. No mere unsupported allegation will be received or accepted as conclusive upon this point. In addition to the *facts and circumstances* required, it must affirmatively appear what the occupation of the accused at the time of flight was; whether he was a resident or only in the State transiently; whether he was married; when the alleged fugitive left the State, and in general the previous history of the accused so far as it can be ascertained, — in short, the affiant's reasons for his belief that the accused is a fugitive from justice, and whether he is in the surrendering State transiently, or making it his residence, and his occupation therein. If the affidavit be not made by the District Attorney or some public officer, the District Attorney must certify that the affiant is a respectable person and entitled to credit.

3. If an indictment has been found, certified copies, in duplicate, must accompany the application.

4. If an indictment has not been found the *facts and circumstances* showing the commission of the crime charged, and that the accused perpetrated the same, must be shown by depositions taken before a *magistrate* (a notary public is not a magistrate within the meaning of the statutes) in support of an information, which must



always be furnished in such case, and no application will be received or considered which is based on an information standing by itself. Conclusions will not be considered except in connection with the facts and circumstances from which they are drawn.

5. If the crime of forgery is charged, an affidavit of the person whose name is alleged to have been forged must be produced, or its absence satisfactorily explained.

6. If the crime charged is seduction, corroborative evidence must be furnished by affidavit of one or more witnesses taken before a magistrate, whether an indictment has been found or not.

7. Except as to the whereabouts of the accused, the sources of information and belief stated must be given, and the reason why such information is not verified by the person possessing it stated.

8. It should be shown that a warrant has been issued, and duplicate certified copies of the same, together with the returns thereto, must be furnished upon an application.

9. In all cases of extradition where the fugitive is beyond the jurisdiction of the United States, the application must, in the first instance, be presented to the Governor. All such papers must be presented in *triplicate*, and conform to the foregoing rules. The triplicate copies must each be certified by the *magistrate*, and must each contain a copy of the information, of the depositions in support thereof, and of a *warrant* issued thereon against the accused for the offence charged. Triplicate copies of *all* papers are absolutely necessary. In foreign countries indictments are not recognized and are absolutely useless.

In Canadian extradition each of the three sets of the papers required must contain one of the three triplicate copies of the information, depositions, and one of the three *triplicate original* warrants issued thereupon; also each original warrant must be accompanied by a copy of itself, and all certified in the form given on page 145, sixth Moak's English Reports. Follow closely the practice given in this volume pages 144-147.

A copy of the rules governing United States extradition will be furnished on application to the State Department at Washington.

10. Applications will not be considered unless it affirmatively appears the alleged fugitive was in this State at the time of the commission of the offence. Constructive crime is not within the extradition laws.

11. The official character of the officer taking the affidavits or



depositions and of the officer who issued the warrants must be duly certified.

12. The District Attorney asking a requisition must, within six months, unless sooner requested, after it is issued, make a return accompanied by the affidavit of the agent named therein, fully stating all proceedings had thereunder, and upon the information or indictment on which the same was based.

13. The Governor of this State will deliver over to the executive of any other State or Territory persons charged therein with crime, only when the demand is accompanied by documents and proofs which are in accordance with the extradition laws.

14. Upon the renewal of an application, — for example: on the ground that the fugitive has fled to another State, not having been found in the State on which the first was granted, new papers in conformity with the above rules must be furnished.

15. All rules heretofore issued by this department, in the matter of the extradition of fugitives from justice, are hereby abrogated.

Approved August 1, 1885.

DAVID B. HILL,  
Governor.

## FORMS OF WARRANTS.

[No. 1. — *Requisition.*]

STATE OF NEW YORK.

EXECUTIVE CHAMBER.

*The Governor of the State of New York to the Governor  
of*

WHEREAS, it appears by the papers required by the statutes of the United States, which are hereunto annexed, and which I certify to be authentic and duly authenticated in accordance with the laws of this State, that \_\_\_\_\_ stand charged with the crime of \_\_\_\_\_, which I certify to be crime under the laws of this State, committed in the County of \_\_\_\_\_, in this State, and it having been represented to me that he ha fled from the justice of this State, and may have taken refuge in the

Now, therefore, pursuant to the provisions of the Constitution and the laws of the United States in such case made and provided, I do hereby require that the said \_\_\_\_\_ be apprehended and delivered to \_\_\_\_\_, who \_\_\_\_\_ hereby authorized to receive and convey \_\_\_\_\_ to the State of New York, there to be dealt with according to law.

In witness whereof, I have hereunto signed my name and affixed the Privy Seal of the State, at the Capitol in the city of Albany, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and \_\_\_\_\_.

By the Governor,

\_\_\_\_\_,  
Private Secretary.

[No. 2. — *Agent's Warrant.*]

## STATE OF NEW YORK.

### EXECUTIVE CHAMBER.

*The Governor of the State of New York to all to whom these presents shall come.*

Know ye that I have authorized and empowered, and by these presents do authorize and empower \_\_\_\_\_, who is a public officer, to wit, a \_\_\_\_\_, to take and receive from the proper authorities of the \_\_\_\_\_ fugitive from justice, and convey \_\_\_\_\_ to the State of New York, there to be dealt with according to law.

In witness whereof, I have hereunto signed my name and affixed the Privy Seal of the State, at the Capitol in the city of Albany, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and \_\_\_\_\_.

By the Governor,

\_\_\_\_\_,  
Private Secretary.

## STATE OF \_\_\_\_\_.

## EXECUTIVE CHAMBER.

I, \_\_\_\_\_, Governor of \_\_\_\_\_, do hereby certify that I have this \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and ninety-\_\_\_\_\_, honored the requisition of the Governor of \_\_\_\_\_, for the surrender of \_\_\_\_\_ fugitive from the justice of said last-named \_\_\_\_\_, and have issued a warrant for \_\_\_\_\_ delivery to \_\_\_\_\_, the agent of said \_\_\_\_\_, whose authority to receive said fugitive is annexed hereto.

In witness whereof, I have hereunto signed my name and affixed the \_\_\_\_\_ Seal of the \_\_\_\_\_, at the Capitol, in \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and ninety-\_\_\_\_\_.

By the Governor,  
\_\_\_\_\_.

[No. 3.—*Rendition Warrant.*<sup>1</sup>]

## STATE OF NEW YORK.

## EXECUTIVE CHAMBER.

*The Governor of the State of New York to \_\_\_\_\_, and the Sheriffs, Under-Sheriffs, and other officers of and in the several cities and counties of this State, authorized by subdivision 1 of section 827 of the Code of Criminal Procedure, to execute this warrant.*

WHEREAS, it has been represented to me by the Governor of the State of \_\_\_\_\_ that \_\_\_\_\_ stand charged with the crime of \_\_\_\_\_, which he certifies to be crime under the laws of said State, committed in the County of \_\_\_\_\_ in said State, and that \_\_\_\_\_ ha fled from justice in said State and ha taken refuge in the State of New York; and the said

<sup>1</sup> On the inside pages of this warrant, which with the returns is printed on the first and fourth pages of a folded sheet, is printed chap. i. title iv. chap. 442, Laws of 1881, as amended by the Act of 1886, chap. 638, Laws of 1886.

Governor of \_\_\_\_\_, having, in pursuance of the Constitution and laws of the United States, demanded of me that I shall cause the said \_\_\_\_\_ to be arrested and delivered to \_\_\_\_\_, who is duly authorized to receive \_\_\_\_\_ into his custody and convey \_\_\_\_\_ back to the said State of \_\_\_\_\_ ;

And whereas, the said representation and demand is accompanied by the papers required by the statutes of the United States to justify a surrender of, and whereby the said \_\_\_\_\_ shown to have been duly charged with the said crime and with having fled from said State, and taken refuge in the State of New York, which are duly certified by the said Governor of \_\_\_\_\_ to be authentic and duly authenticated ;

Therefore, you are required to arrest and secure the said \_\_\_\_\_ wherever \_\_\_\_\_ may be found within the State \_\_\_\_\_, and to thereafter deliver \_\_\_\_\_, after compliance with Section 827 of the Code of Criminal Procedure, into the custody of the said \_\_\_\_\_, to be taken back to the said State from which \_\_\_\_\_ fled, pursuant to the said requisition ; and also to return this warrant and make return to the Executive Chamber, within thirty days from the date hereof, of all your proceedings had hereunder, and of all facts and circumstances relating thereto.

Given under my hand and the Privy Seal of the State, at the Capitol, in the city of Albany, this \_\_\_\_\_ day \_\_\_\_\_, in the year of our Lord one thousand eight hundred and \_\_\_\_\_.

By the Governor,

\_\_\_\_\_

*Private Secretary.*

[Return 1.]

## STATE OF NEW YORK,

County of \_\_\_\_\_

City of \_\_\_\_\_

I, \_\_\_\_\_, the officer intrusted with the execution of the within warrant, do hereby make the following return thereto :  
On the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_, I received the within war-

rant by \_\_\_\_\_, and on the \_\_\_\_\_ day of \_\_\_\_\_  
 18\_\_\_\_, I arrested the fugitive named therein by my subordinate  
 officer \_\_\_\_\_. Thereafter said fugitive  
 informed by my direction of \_\_\_\_\_ rights under section 827 of the  
 Code of Criminal Procedure, and the following proceedings were  
 had:

Annexed hereto and made a part of this return is the order,  
 waiver required to be returned to the Governor by the provisions  
 of said section 827.

Subsequently and on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, said  
 fugitive \_\_\_\_\_ delivered to the agent named in the within warrant,  
 whose receipt for the said fugitive is annexed hereto and made a  
 part of this return.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_.

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[*Return 2.*]

### STATE OF NEW YORK,

County or \_\_\_\_\_

City of \_\_\_\_\_

I, \_\_\_\_\_, the agent of the State of \_\_\_\_\_ named  
 in the within warrant, do hereby acknowledge the delivery to me  
 this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, by \_\_\_\_\_, the  
 officer intrusted with the execution of the said warrant, of the  
 body of \_\_\_\_\_, fugitive from the justice of  
 said State of \_\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_.

[*No. 4. — Governor's Certificate of Rendition.*]

### STATE OF NEW YORK.

#### EXECUTIVE CHAMBER.

I, \_\_\_\_\_, Governor of the State of New York, do  
 hereby certify that I have this \_\_\_\_\_ day of \_\_\_\_\_, 189\_\_\_\_,  
 honored the requisition of the Governor of \_\_\_\_\_, for the  
 surrender of \_\_\_\_\_ fugitive from the justice of said  
 last-named \_\_\_\_\_, and have issued a warrant for \_\_\_\_\_ delivery

to \_\_\_\_\_, the agent of said \_\_\_\_\_ of \_\_\_\_\_,  
 whose authority to receive said fugitive is annexed hereto.

In witness whereof, I have hereunto signed my name and affixed  
 the Privy Seal of the State, at the Capitol, in the city of Albany,  
 this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thou-  
 sand eight hundred and ninety-\_\_\_\_\_.

By the Governor,  
 \_\_\_\_\_

*Private Secretary.*

The following forms are used in the city and county of New  
 York.

[No. 1. — *Application for Requisition.*]

## OFFICE OF THE DISTRICT ATTORNEY

OF THE COUNTY OF NEW YORK.

*To His Excellency the Governor.*

SIR, — In compliance with your rules in reference to applications  
 for requisitions on Governors of other States and Territories, and  
 the Chief Justice of the Supreme Court of the District of Columbia,  
 I have the honor herewith to make application for a requisition  
 upon the Governor of the State of \_\_\_\_\_, for \_\_\_\_\_,  
 who stands indicted in this County for the crime of \_\_\_\_\_,  
 and who, as appears from the annexed affidavit of \_\_\_\_\_,  
 who \_\_\_\_\_ responsible person and entitled to credit, \_\_\_\_\_ fugitive  
 from the justice of his State, and is now in the said State  
 of \_\_\_\_\_.

I hereby certify, —

A. That the full name of the person for whom extradition is  
 asked is \_\_\_\_\_, and the name of the person whom I here-  
 by propose for designation as the agent of this State herein,  
 is \_\_\_\_\_.

B. That in my opinion the ends of public justice require that  
 the fugitive be brought to this State for trial, at the public ex-  
 pense, and that I am willing that such expense be a charge on this  
 county.

C. That I have, as I believe, sufficient evidence to insure a con-  
 viction of the fugitive.

D. That the person named above as agent is a of the municipal police of the city of New York, a public officer, and a proper person to be so designated, and that he has no private interest in the arrest of the fugitive.

E. No other application has been made for a requisition for this fugitive growing out of the transaction from which the indictment herein originated.

F. That the fugitive is , now under arrest

G. That this application is not made for the purpose of enforcing the collection of a debt, or for any private purpose whatever, and that if the requisition applied for be granted, the criminal proceedings shall not be used for any of said objects.

H. That all the papers in duplicate herein have been compared with each other, and are, in all respects, exact counterparts.

I. That the fugitive , charged with the commission of , under , which provides that , and is punishable by .

J. That more than one year has elapsed since the commission of the offence charged in the indictment.

Certified copies in duplicate of the indictment against the fugitive, duplicate original warrants issued for arrest and duplicate original returns thereto, are attached to this application.

I am, sir,

Very respectfully, your obedient servant,

\_\_\_\_\_  
District Attorney New York County.

NEW YORK CITY,

18—.

## STATE OF NEW YORK.

IN THE MATTER  
OF

A FUGITIVE FROM THE JUSTICE  
OF THIS STATE.

} *Affidavit of Agent.*

CITY AND COUNTY OF NEW YORK, ss :

\_\_\_\_\_, being duly sworn deposes, and says as follows : I am a detective sergeant attached to the Central Office of the Police

Department of the city of New York, and the agent named in the  
 . requisition granted on the \_\_\_\_\_ day of \_\_\_\_\_, 189 ,  
 by the Governor of the State of New York, upon the Governor of  
 the State of \_\_\_\_\_ for the extradition of the above-men-  
 tioned fugitive, then charged in the County of New York, upon an  
 indictment for the crime of \_\_\_\_\_. The said requisition  
 was placed in my hands on the \_\_\_\_\_ day of \_\_\_\_\_, 188 ,  
 and on the \_\_\_\_\_ day of \_\_\_\_\_, 188 , I proceeded to  
 the said State of \_\_\_\_\_, where I presented the said requis-  
 tion to the Governor of the said State of \_\_\_\_\_, and re-  
 ceived from him his warrant authorizing the delivery of the said  
 fugitive to me by the authorities of the \_\_\_\_\_ of \_\_\_\_\_,  
 in said State of \_\_\_\_\_, where the said fugitive was then held  
 in custody pending such requisition, that I might convey him from  
 the said State of \_\_\_\_\_ to the State of New York.

On the \_\_\_\_\_ day of \_\_\_\_\_, 188 , I received the said  
 \_\_\_\_\_ into my custody at said \_\_\_\_\_, in the said  
 State of \_\_\_\_\_, pursuant to the said warrant of the said  
 Governor of \_\_\_\_\_, and with him returned to the State of  
 New York, and on the \_\_\_\_\_ day of \_\_\_\_\_, 188 , the  
 said fugitive was brought to the bar of the Court of General Ses-  
 sions of the Peace of this County, and committed to the city prison  
 of the city of New York, to await trial upon the said indictment.

Sworn to this \_\_\_\_\_ day of \_\_\_\_\_, }  
 188 , before me. \_\_\_\_\_ }



[No. 2. — *Return of Proceedings.*]

STATE OF NEW YORK,

CITY AND COUNTY OF NEW YORK.

IN THE MATTER

OF

A FUGITIVE FROM THE JUSTICE  
OF THIS STATE.} *Return of Proceedings under Rule 12.**To his Excellency the Governor.*

SIR, In accordance with your Excellency's Twelfth Rule in reference to applications for requisitions on Governors of other States and Territories, and the Chief Justice of the Supreme Court of the District of Columbia, I have the honor to make following return of the proceedings had under the requisition upon the Governor of the State of \_\_\_\_\_, granted by your Excellency, on the \_\_\_\_\_ day of \_\_\_\_\_, 189\_\_\_\_, upon my application, for the extradition from said State of \_\_\_\_\_, of the above named fugitive, then charged in this county, upon an indictment for the crime of \_\_\_\_\_, and also of the proceedings had upon the said indictment, being the basis of my application for said requisition, to wit:

The accompanying affidavit of \_\_\_\_\_, the agent named in said requisition, fully states all the proceedings had thereunder.

After the commitment of the said \_\_\_\_\_, to answer trial upon the said indictment as therein stated, to wit: on the \_\_\_\_\_ day of \_\_\_\_\_, 188\_\_\_\_, he having been meanwhile admitted to bail to answer the said indictment, the said \_\_\_\_\_, at a term of the said Court of General Sessions of the Peace, then in session, before the Honorable \_\_\_\_\_, Justice of the said court, was in due form of law of the \_\_\_\_\_, and felony as alleged in the said indictment.

Whereupon it was considered by the said Court of General Sessions of the Peace, that \_\_\_\_\_.

\_\_\_\_\_,  
*District Attorney of the County of New York.*

Dated New York,

189\_\_\_\_.

John D. Lindsay, Esq., assistant district attorney, New York city, has furnished me with a form of affidavit as to flight. Owing to the changes required to meet the facts, this form has not been printed, but it outlines the affidavit, and is as follows: <sup>1</sup>—

STATE OF NEW YORK.

IN THE MATTER  
OF

A FUGITIVE FROM THE JUSTICE  
OF THIS STATE.

*Affidavit as to flight, &c.*

CITY AND COUNTY OF NEW YORK, ss:

———, being duly sworn, deposes and says as follows:

(a) The above named \_\_\_\_\_ is charged with the crime of \_\_\_\_\_, in having on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, at the city and county aforesaid \_\_\_\_\_, and on the day of \_\_\_\_\_, 189\_\_\_\_, an indictment alleging the commission by \_\_\_\_\_ of the said crime was duly filed in the Court of General Sessions of the Peace of the City and County of New York by the grand jury of the said city and county, a certified copy of which indictment accompanies this application.

(b) The said \_\_\_\_\_ was actually in the said city and county on the day of the commission of the said crime, and was seen there on or about said day, by \_\_\_\_\_, as I am informed by \_\_\_\_\_, and verily believe.

(c) After the commission of the said crime, to wit, on or about the \_\_\_\_\_ day of \_\_\_\_\_, 189\_\_\_\_, for the purpose, of avoiding prosecution for the said crime, the said \_\_\_\_\_ fled from the justice of this State, and is now in the \_\_\_\_\_ of \_\_\_\_\_, in the State of \_\_\_\_\_, a fugitive from justice as I have reason to believe for the following reasons, to wit, \_\_\_\_\_.

Further, I am informed by \_\_\_\_\_ that on the day of \_\_\_\_\_, 189\_\_\_\_, the said \_\_\_\_\_ was arrested at the \_\_\_\_\_ of \_\_\_\_\_, in the said State of \_\_\_\_\_, and is now held in custody there pending the action of the executive of this State in the institution of proceedings for \_\_\_\_\_ extradition.

<sup>1</sup> This form has since been printed.

(d) This application is made in good faith, for the sole purpose of punishing the accused, and not for the purpose of enforcing the collection of a debt, or for any private purpose whatever, and if the application be granted the criminal proceedings shall not be used for any of the said purposes.

(e) The said \_\_\_\_\_ is about \_\_\_\_\_ years of age, is married, and is \_\_\_\_\_ a resident of this State, \_\_\_\_\_ home being at \_\_\_\_\_, in the \_\_\_\_\_ of \_\_\_\_\_, where \_\_\_\_\_ has lived for \_\_\_\_\_, as I am informed and verily believe.

Further than as is stated above I have no knowledge of \_\_\_\_\_ previous history. \_\_\_\_\_.

Subscribed and sworn to before me, at  
the city and county aforesaid, this  
day of \_\_\_\_\_, 189 .

[No 3. — *Waiver* (§ 827 *Code Crim. Pro.*).]

*To whom it may concern, greeting.*

WHEREAS, by virtue of a requisition heretofore duly made upon him by the Governor of the State of \_\_\_\_\_, accompanied by \_\_\_\_\_, from the authorities of the said State of \_\_\_\_\_, charging one \_\_\_\_\_ with having committed the crime of \_\_\_\_\_, in the said last-mentioned State, his Excellency \_\_\_\_\_, Governor of the State of New York, did on the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and ninety-\_\_\_\_\_, duly issue and transmit his certain warrant for the arrest of the said \_\_\_\_\_, as a fugitive from the justice of the said State of \_\_\_\_\_, to \_\_\_\_\_, Chief Inspector of Police of the city of New York, &c., therein designating one \_\_\_\_\_ (the agent named in the said requisition on the part of the said State of \_\_\_\_\_), as the person into whose custody the said \_\_\_\_\_ might be lawfully delivered;

And whereas, thereafter and on the \_\_\_\_\_ day of \_\_\_\_\_, in the year aforesaid, the undersigned was duly arrested under and by virtue of the said warrant by \_\_\_\_\_, a \_\_\_\_\_ of the municipal police of the said city of New York, to whom the

said warrant had been duly entrusted for execution, and in whose custody the undersigned is now held by virtue thereof;

And whereas, the undersigned has been duly informed and is now fully aware that before he may be lawfully delivered into the custody of the said \_\_\_\_\_, as such agent as aforesaid, it is his right and privilege under the laws of the State of New York (unless such right and privilege be waived) to be taken before a judge of the Supreme Court, of a superior city court, or the presiding judge of the Court of General Sessions of the city and county of New York, who would thereupon inform him of the cause of his arrest, the nature of the process, and instruct him that if he claim not to be the particular person mentioned in said requisition and the indictment and warrant annexed thereto, or in the said warrant so duly issued thereon, he may have a writ of *habeas corpus* upon filing an affidavit to that effect.

Now, therefore, know ye, that the undersigned, acknowledging himself to be the particular person in the said requisition and the indictment and warrant annexed thereto, and also in the warrant so duly issued thereon, mentioned and described as \_\_\_\_\_, does hereby voluntarily, and not by reason of any threats or undue influence on the part of any person or persons whatsoever, consent to waive, and does hereby waive his right to be taken before any or either of such judges for the purpose aforesaid.

In witness whereof, the undersigned has to this consent or waiver duly subscribed his name this \_\_\_\_\_ day of \_\_\_\_\_, in the year aforesaid.

IN THE PRESENCE OF  
\_\_\_\_\_,  
the officer entrusted with the execution of the warrant of the Governor of this State herein, and  
\_\_\_\_\_,  
a counsellor-at-law of this State.

[No. 4. — *Order on refusal to waive or to file affidavit for habeas corpus, under § 827 Code Crim. Pro.*]

At a                      Term of the                      Court of                      , held  
in and for the city and county of New York, at the                      , in  
the city of New York, on the                      day of                      , in the year of  
our Lord one thousand eight hundred and ninety-                      .

*Present,*

*The Honorable* ———— ,  
*Justice.*

IN THE MATTER  
OF  
A FUGITIVE FROM THE JUSTICE OF  
THE STATE OF .

WHEREAS, by virtue of a requisition heretofore duly made upon him by the Governor of the State of                      , accompanied by the papers required by the statutes of the United States in such cases, from the authorities of the said State, charging the above named fugitive with having committed the crime of                      , in the said last-mentioned State, His Excellency                      , Governor of the State of New York, did on the                      day of                      , in the year of our Lord one thousand eight hundred and ninety-                      , duly issue and transmit his certain warrant for the arrest of the said fugitive to                      , chief inspector of police of the city of New York, &c., therein designating one                      (the agent named in said requisition on the part of the said State of                      ) as the person into whose custody the said                      might be lawfully delivered, and commanding the delivery of the said fugitive to the said agent, after a compliance with the provisions of the code of criminal procedure in respect thereto ;

And whereas, thereafter and on the                      day of                      , in the year aforesaid, a person was arrested under and by virtue of the said warrant by                      , a                      of the municipal police of the said city of New York, to whom the said war-

rant had been duly intrusted for execution, as such fugitive, to wit: as the person therein mentioned and described as ;

And whereas, the person so arrested was upon being arrested and before any proceedings were taken for his delivery into the custody of the said agent duly informed and made fully aware that before he could be lawfully delivered into the custody of the said , as such agent as aforesaid, it was his right and privilege under the laws of the State of New York, and the provisions of the code of criminal procedure aforesaid (unless such right and privilege be waived) to be taken before a judge, either of the Supreme Court, or of a superior city court, or the presiding judge of the court of general sessions of the city and county of New York, who would thereupon inform him of the cause of his arrest, the nature of the process, and instruct him that if he claimed not to be the particular person mentioned in said requisition and the accompanying papers, to wit: in the indictment, affidavit, or warrant annexed thereto, or in the said warrant so duly issued thereon, and under and by virtue of which he was arrested, he might have a writ of *habeas corpus* upon filing an affidavit to that effect;

And whereas, the person so arrested as aforesaid, upon being so informed and made aware of his said right and privilege, although acknowledging himself to be , did refuse to consent to waive, or to waive his right to be taken before one of such judges for the purpose aforesaid;

And whereas, thereafter and on the said last mentioned day, pursuant to the provisions of the code of criminal procedure aforesaid, the said did thereupon duly take the person so arrested as aforesaid, as a prisoner before the Hon. , one of the judges of this court, then sitting as a justice thereof , who, thereupon did duly inform the said prisoner of the cause of his arrest, the nature of the process, and instruct him that if he claimed not to be the particular person mentioned in the said requisition and the accompanying papers aforesaid, or in the warrant so as aforesaid issued thereon, he might have a writ of *habeas corpus* upon filing an affidavit to that effect;

And whereas, the said prisoner did thereupon refuse to file an affidavit to the effect aforesaid;

And whereas, it has been made to appear to the satisfaction of the court that the person so arrested as aforesaid, and so brought before the Honorable as a prisoner as aforesaid, and

now here in court is the person so mentioned in the said requisition and the accompanying papers, and the warrant so issued thereon, to wit: the person in the said warrant mentioned and described as \_\_\_\_\_, such fugitive as aforesaid, and the person intended therein and thereby;

Now therefore, on motion of the district attorney of this county, it is

Ordered that the said \_\_\_\_\_ be and he hereby is ordered and directed forthwith to deliver the said prisoner into the custody of the said \_\_\_\_\_, such agent as aforesaid, pursuant to the requirements of the said warrant.

[No. 5. — *Order directing surrender after habeas corpus* (§ 827, *Code Crim. Pro.*).]

At a \_\_\_\_\_ Term of the \_\_\_\_\_ Court of \_\_\_\_\_, held in and for the city and county of New York, at the \_\_\_\_\_ in the city of New York, on the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and ninety-\_\_\_\_\_.

*Present,*

*The Honorable* \_\_\_\_\_,  
*Justice.*

IN THE MATTER  
OF

A FUGITIVE FROM THE JUSTICE OF  
THE STATE OF \_\_\_\_\_

WHEREAS, by virtue of a requisition heretofore duly made upon him by the Governor of the State of \_\_\_\_\_, accompanied by the papers required by the statutes of the United States in such cases, from the authorities of the said State, charging the above named fugitive with having committed the crime of \_\_\_\_\_, in the said last-mentioned State, His Excellency \_\_\_\_\_, Governor of the State of New York, did on the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and ninety-\_\_\_\_\_,

duly issue and transmit his certain warrant for the arrest of the said fugitive to \_\_\_\_\_, chief inspector of police of the city of New York, &c., therein designating one \_\_\_\_\_ (the agent named in said requisition on the part of the said State of \_\_\_\_\_), as the person into whose custody the said fugitive might be lawfully delivered, and commanding the delivery of the said fugitive, after a compliance with the provisions of the code of criminal procedure to the said \_\_\_\_\_ ;

And whereas, thereafter and on the \_\_\_\_\_ day of \_\_\_\_\_, in the year aforesaid, a person was arrested under and by virtue of the said warrant, by \_\_\_\_\_, a \_\_\_\_\_ of the municipal police of the said city of New York, to whom the said warrant had been duly intrusted for execution, as such fugitive, to wit: as the person therein mentioned and described as \_\_\_\_\_ ;

And whereas, thereafter and on the said last mentioned day, pursuant to and in compliance with the provisions of the code of criminal procedure aforesaid, the said \_\_\_\_\_, before delivering the person so arrested as aforesaid into the custody of the said \_\_\_\_\_, such agent as aforesaid, did duly take him as a prisoner before the Honorable \_\_\_\_\_, one of the judges of this court, then sitting as a justice thereof, who thereupon in open court did duly inform the said prisoner of the cause of his arrest, the nature of the process, and instruct him that if he claimed not to be the particular person mentioned in said requisition, or the indictment or affidavit accompanying the same, or in the warrant so as aforesaid issued thereon, he might have a writ of *habeas corpus* upon filing an affidavit to that effect ;

And whereas, the said prisoner did thereupon file an affidavit to the effect that he was not the particular person mentioned in the said warrant \_\_\_\_\_ ; whereupon the said justice did duly grant a certain writ of *habeas corpus* directed to \_\_\_\_\_, or to any person having the custody of \_\_\_\_\_, commanding him that he have the body of the said \_\_\_\_\_ by him imprisoned and detained, as it was said, together with the time and cause of such imprisonment and detention, by whatsoever name the said \_\_\_\_\_ was called or charged before this court, at \_\_\_\_\_ thereof, to be held at the \_\_\_\_\_ in the city and county aforesaid, on the \_\_\_\_\_ day of \_\_\_\_\_, in the year aforesaid, to do and receive what should then and there be



considered concerning the said \_\_\_\_\_, and to have then there the said writ ;

And whereas, the said person so arrested as aforesaid, and so brought before the said justice as a prisoner as aforesaid, was this day duly produced before this court pursuant to the requirements of the said *habeas corpus*, whereupon this court did duly proceed to summarily hear and examine into the facts and circumstances, and upon which hearing the said prisoner was found by the court to be the person so indicted and mentioned in the said requisition and the accompanying papers, and the warrant so issued thereon, to wit : as the person in the said warrant mentioned and described as \_\_\_\_\_ ;

Now therefore, on motion of \_\_\_\_\_, Esquire, district attorney of this county, it is

Ordered that the said \_\_\_\_\_ be and he hereby is ordered and directed forthwith to deliver the said prisoner into the custody of the said \_\_\_\_\_, such agent as aforesaid, pursuant to the requirements of the said warrant.

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## NORTH CAROLINA.

SECTION 1165. Any justice of the Supreme Court, or any judge of the Superior Court, or of any criminal court, or any justice of the peace, or mayor of any city, or chief magistrate of any incorporated town, on satisfactory information laid before him that any fugitive in the State has committed, out of the State and within the United States, any offence which, by law of the State in which the offence was committed, is punishable either capitally or by imprisonment for one year or upwards in any State prison, shall have full power and authority, and is hereby required to issue a warrant for said fugitive, and commit him to any jail within the State for the space of six months, unless sooner demanded by the public authorities of the State wherein the offence may have been committed, pursuant to the Act of Congress in that case made and provided ; if no demand be made within that time the said fugitive shall be liberated, unless sufficient cause be shown to the contrary. (Code 1868-69, chap. 178, sub-chap. 3, § 34.)

SECT. 1166. Every magistrate committing any person under the preceding section, shall keep a record of the whole proceedings before him, and immediately transmit a copy thereof to the Governor for such action as he may deem fit therein under the law. (1868-69, chap. 178, sub-chap. 3, § 35.)

SECT. 1167. The Governor shall immediately inform the Governor of the State or Territory in which the crime is alleged to have been committed, or the President of the United States, if it be alleged to have been committed within the District of Columbia, of the proceedings had in such case. (1868-69, chap. 178, sub-chap. 3, § 36.)

SECT. 1168. Every sheriff or jailer, in whose custody any person so committed shall be, upon the order of the Governor shall surrender him to the person named in such order. (1868-69, chap. 178, sub-chap. 3, § 37.)

Sections 1169 and 1170 relate to rewards and expenses for recovery of criminals who have fled from North Carolina.

[The Code of North Carolina, 1888, Vol. I. chap. xxvi. pp. 465, 466.]

The rules adopted by the Interstate Conference, 1887 (see introduction to this appendix), are in force in North Carolina.

## FORMS.

[No. 1.—*Requisition.*]

### STATE OF NORTH CAROLINA.

*To his Excellency, the Governor of*

THE annexed papers, duly authenticated in accordance with law, show that by \_\_\_\_\_, in the County of \_\_\_\_\_, State of North Carolina \_\_\_\_\_, stands charged with \_\_\_\_\_, which is a crime against the laws of this State, and it appearing that the said \_\_\_\_\_ has fled from justice and has taken refuge in the State of \_\_\_\_\_;

Therefore, in pursuance of justice, and by authority of the Constitution and laws of the United States, I, \_\_\_\_\_, Governor of the State of North Carolina, do hereby require that the said \_\_\_\_\_ be apprehended and delivered to \_\_\_\_\_, who is hereby authorized and commissioned as the agent of this

State to receive said fugitive and convey him to the County of \_\_\_\_\_, in the State of North Carolina, to be dealt with according to law.

In witness whereof, I have hereunto set my hand and caused to be affixed the Great Seal of State.

Done at our city of Raleigh, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and ninety-\_\_\_\_\_, and in the one hundred and \_\_\_\_\_ year of our American Independence.

By the Governor,

\_\_\_\_\_,  
Private Secretary.

[No. 2. — *Rendition Warrant.*]

STATE OF NORTH CAROLINA.

*To any Sheriff or other officer of the State of North Carolina, to whom these presents shall come, greeting.*

WHEREAS, a requisition has this day been received from his Excellency the Governor of \_\_\_\_\_, for the rendition of \_\_\_\_\_, who stands charged with the crime of \_\_\_\_\_, in said State, and who has escaped therefrom and taken refuge in the State of North Carolina;

Now, therefore, I, \_\_\_\_\_, Governor of the State of North Carolina, do hereby command that the said fugitive be delivered to \_\_\_\_\_, who is authorized to receive and carry him to the State of \_\_\_\_\_, for trial, in accordance with the laws in such case made and provided.

In witness whereof, I have hereunto set my hand and caused the Great Seal of the State to be affixed.

Done at our city of Raleigh, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and ninety-\_\_\_\_\_, and in the one hundred and \_\_\_\_\_ year of our Independence.

By the Governor,

\_\_\_\_\_,  
Private Secretary.

## NORTH DAKOTA.

THIS State has no statute in relation to interstate rendition. The following rules, adopted by Governor Church, of the Territory of Dakota, are now in force in the State of North Dakota, *mutatis mutandis*.

## REQUISITIONS.

1. The provisions of Sect. 5278 of the Revised Statutes of the United States are as follows :—

SECT. 5278. Whenever the executive authority of any State or Territory demands any person as a fugitive from justice of the executive authority of any State or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before any magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the Governor or chief magistrate of the State or Territory from whence the person so charged has fled, it shall be the duty of the executive authority of the State or Territory to which such person has fled to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority giving such demand, or to the agent of such authority appointed to receive the fugitive, and cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within six months from the time of the arrest, the prisoner may be discharged. All costs or expenses incurred in the apprehending, securing, and transmitting such fugitive to the State or Territory making such demand, shall be paid by such State or Territory.

2. The provisions of Sect. 5279 of said Revised Statutes are as follows :—

SECT. 5279. Any agent so appointed who receives the fugitive into his custody shall be empowered to transport him to the State or Territory from which he has fled. And every person who, by force, sets at liberty or rescues the fugitive from such agent while so transporting him, shall be fined not more than five hundred dollars or imprisoned not more than one year.

3. The application should be addressed to the Governor, and should contain a statement in plain and concise language of the

facts in the case, and the reasons why, in the opinion of the applicant, a requisition should be issued; that the person charged is a fugitive from justice; that he has fled from the Territory to avoid arrest and before an arrest could be made, showing particularly the time and circumstances of his flight, and in what State or Territory he is, and that the ends of justice require that he be brought back to this Territory for trial.

4. A proper person should be nominated to be appointed and commissioned as the agent of the Territory to receive the fugitive when apprehended, giving his residence and official character, if any he have.

5. The application should be signed and verified by the affidavit of the applicant.

6. In all cases of forgery, false pretences, embezzlement, seduction, fraudulent transfers, selling mortgaged property, and similar cases, the application should be verified by the injured party, and if not so done the reason why should be given.

7. In cases of seduction, the affidavit of one or more persons of well known respectability should be furnished as to the previous good character and respectability of the injured party, and if no indictment has been found, the reason why must be shown under oath.

8. If the offence is not of recent occurrence, sufficient reason must be given why the application has been delayed.

9. The application should be accompanied by a duly certified copy of the indictment, if one has been found against the offender.

10. If no indictment has been found, there should be furnished a certified copy of a sufficient affidavit made and pending before a magistrate in the county where the alleged offence was committed. The facts therein should be stated with the same particularity as in an indictment, and in the absence of an indictment in cases of false pretences, embezzlement, fraudulent transfers, and selling mortgaged property, the evidence relied on to sustain the charge should be filed with the application.

11. In certifying to a copy of an indictment or affidavit, it is recommended that the following form be used:—

THE TERRITORY OF DAKOTA, )  
COUNTY OF \_\_\_\_\_, ) ss.

I, \_\_\_\_\_, Clerk of the District Court (or Justice of the Peace), within and for said county and State, do hereby certify

that the above and foregoing is a full, true, and complete copy of the original indictment, as returned by the grand jury (or affidavit) now on file in my office in the case of \_\_\_\_\_ vs. \_\_\_\_\_, now pending in said court (or before me) for trial.

Witness my hand and the seal of said court at \_\_\_\_\_, this day of \_\_\_\_\_, 189 .

[SEAL.]

\_\_\_\_\_,  
Clerk District Court (or Justice of the Peace),  
\_\_\_\_\_ County, Dakota.

12. The purpose of granting requisitions being to aid in the administration of the criminal law, no requisition will be issued to aid in collecting a debt or enforcing a civil remedy against a person who has left the State, nor shall the criminal proceedings, when such offender is arrested, be used for any of said objects.

13. If an application has previously been made and granted in a case arising out of the same facts, the reasons for making another application must be given.

14. If the alleged fugitive from justice is known to be under arrest, in either civil or criminal proceedings, the fact of such arrest and the nature of such proceedings must be fully stated.

15. The Governor in his discretion will require evidence of the character of the person making the affidavit.

16. The opinion of the district attorney of the district court as to the propriety of granting the requisition, should be furnished. He should also certify that he has carefully examined the application and accompanying papers, and approved of the same.

17. If any oath is administered by any officer not having an official seal, his official character must be duly certified.

18. The following forms are recommended : —

#### APPLICATION FOR REQUISITION.

*To the Governor of Dakota Territory.*

You are respectfully requested to issue a requisition to the Governor of \_\_\_\_\_, for the apprehension and rendition of \_\_\_\_\_, who stands charged by an \_\_\_\_\_, pending in \_\_\_\_\_ court, with the crime of \_\_\_\_\_, committed in \_\_\_\_\_ county, but who has since the commission of said offence, and before an arrest could be made upon process issued by said court, and with a view of avoiding arrest, fled from the justice of the Territory of Dakota, and into the said State of \_\_\_\_\_, where I believe he now may be found.

The time and circumstances of his flight and the reasons for my belief as to where he may be found are as follows :

In my opinion the ends of justice require that he be brought back to this Territory for trial ; that the facts stated in said are true, and that the prosecution of the said would result in the conviction of the crime charged. I herewith present a duly certified copy of the original , now on file in the office of , in said county. I nominate of , as a proper person to be appointed and commissioned by you as the agent of the Territory of Dakota, to receive the said fugitive, when he shall be apprehended, and bring him to this State and deliver him into the custody of the sheriff of said county. The requisition asked for said fugitive is not sought for the purpose of collecting a debt, or enforcing a civil remedy, or to answer any other private end whatever, nor shall the criminal proceedings, when such offender is arrested, be used for any of said purposes.

Dated at , , 189 .

The Territory of Dakota, County.

I, ————, being duly sworn, on my oath say that the facts stated in the foregoing application are true.

Subscribed and sworn to before me this day of , 189 .  
[SEAL.]

*To the Governor.*

Having carefully examined the foregoing application and accompanying papers, and approved of the same, in my opinion it would be proper for you to issue the requisition asked.

\_\_\_\_\_,  
*District Attorney.*

19. Two complete original sets of all the papers necessary upon the application must be furnished ; one set to be attached to the requisition and one set to be retained in this department.

20. In no case will a requisition for a fugitive from justice be granted at the same time upon the Governor of more than one State.

21. The law of Congress clearly contemplates an affidavit made in the county where the crime is alleged to have been committed, and before a magistrate having authority to hear the charge when

the fugitive shall have been returned by such process to make answer thereto.

22. If the application is based upon an affidavit made before a magistrate, it should appear from a certificate of the clerk of the district court of the proper county that he is an acting justice of the peace, duly elected and qualified, and that his signature is genuine, and that his certificate is in due form of law.

23. As notaries public are not magistrates within the meaning of the laws of the United States, no requisition will be granted upon an affidavit made before a notary public.

24. An application should not be made upon a constructive crime. The person charged must have been within the State at the time of the commission of the crime.

25. The Governor has no authority to require the surrender of fugitives who have taken refuge in any country beyond the jurisdiction of the United States, but an application will be made by him to the Secretary of State for the United States for the surrender of a fugitive from justice, charged with a violation of the laws of this Territory.

26. The agent's commission will be mailed with the requisition, unless otherwise requested, and he should within a reasonable time make due return of the commission to this office.

27. The Governor will exercise the right, in his discretion, for cause appearing, to revoke a requisition at any time, without notice.

28. Every requisition will be issued upon the express condition that if the same is not presented to the authority upon whom made within three months from the day of issue, it shall be deemed revoked, and shall become absolutely null and void.

29. The person appointed to arrest and receive the fugitive is the agent of the Governor, and official fees received by him as sheriff, under-sheriff, or other officer, if he should chance to be such an official, are not a guide to charges for his services in this capacity. All agents duly commissioned will be allowed three dollars per day for the time necessarily employed in such service, and their *actual and necessary* expenses. The accounts must be made in detail, including the exact amount of railroad fare paid for officer and prisoner, the whole to be supported by affidavit stating that the account is correct and just, and that the expenditures were necessary in apprehending and returning the fugitive.



30. No account for expenses will be allowed unless the fugitive has been returned to the proper county in this Territory for trial.

31. The attention of all officers in the Territory is particularly called to chapter 57, Laws of 1887, which reads as follows: —

§ 1. **Extradition of Fugitives.** — That any person who is arrested within this Territory, by virtue of a warrant issued by the Governor of this Territory, upon a requisition of the Governor of any other State or Territory, as a fugitive from justice under the laws of the United States, shall not be delivered to the agent of such State or Territory until notified of the demand made for his surrender, and given twenty-four hours to make demand for counsel, and should such demand be made for the purpose of suing out a writ of *habeas corpus*, the prisoner shall be forthwith taken to the nearest judge of the district court, and ample time given to sue out such writ, such time to be determined by the said judge of the district court.

§ 2. **Penalty for Unlawful Delivery of Fugitive.** — That any officer, who shall deliver such person to such agent for extradition without first having complied with the provisions of the preceding section, shall be deemed guilty of a misdemeanor.

LOUIS K. CHURCH,

*Governor Dakota Territory.*

## FORMS OF WARRANTS.

[No. 1. — *Requisition.*]

### STATE OF NORTH DAKOTA.

#### EXECUTIVE DEPARTMENT

*The Governor of the State of North Dakota, to his Excellency the Governor of the*

WHEREAS, it appears by the annexed papers, which I hereby certify are duly authenticated in accordance with the laws of this State, that \_\_\_\_\_ stands charged by \_\_\_\_\_ with \_\_\_\_\_, which I certify to be a crime under the laws of this State, committed in the County of \_\_\_\_\_, in this State, that he ha fled from the justice of this State, and that it is believed he ha taken refuge in the State of \_\_\_\_\_;

Now, therefore, I, \_\_\_\_\_, Governor of the State of North Dakota, pursuant to the provisions of the Constitution and Revised Statutes of the United States, do hereby make requisition for the apprehension of the said fugitive, and for delivery to \_\_\_\_\_, who is hereby authorized to receive and convey \_\_\_\_\_ to the State of North Dakota, here to be dealt with according to law.

In testimony whereof, I have hereunto set my hand and caused to be affixed the Great Seal of the State of North Dakota.

Done at Bismarck, the capital of said State, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and \_\_\_\_\_, and of the Independence of the United States the one hundred and \_\_\_\_\_.

By the Governor,

\_\_\_\_\_,  
Secretary of State.

[No. 2. — Agent's Warrant.]

## STATE OF NORTH DAKOTA.

### EXECUTIVE DEPARTMENT.

*To all to whom these presents shall come, greeting.*

WHEREAS, it has been authentically represented to me that \_\_\_\_\_, who accused by \_\_\_\_\_, in the County of \_\_\_\_\_, of the crime of \_\_\_\_\_, has fled from the justice of this State, and taken refuge within the State of \_\_\_\_\_;

And whereas, agreeably to the Constitution and laws of the United States and of the laws of the State of North Dakota, I have made application to his Excellency the Governor of \_\_\_\_\_, for the delivery of said \_\_\_\_\_, as fugitive from justice;

Now, therefore, in the name and by the authority of the people of the State of North Dakota, I, \_\_\_\_\_, Governor of the State, do by these presents appoint and commission \_\_\_\_\_, of \_\_\_\_\_, agent on the part of this State, for the purpose of bringing the said \_\_\_\_\_ into this State, having jurisdiction of the crime aforesaid, whenever the Governor of the State of

shall cause to be delivered up according to the requisition aforesaid.

These are, therefore, to request and require all persons to permit the said to receive and secure the said, and bring unmolested into this State, said agent peaceably and lawfully behaving. The State will be at no expense on account hereof unless the accused is returned to the State.

In testimony whereof, I have hereunto set my hand, and caused to be affixed the Great Seal of the State of North Dakota.

Done at Bismarck, the capital of said State, this day of, in the year of our Lord one thousand eight hundred and

\_\_\_\_\_,  
Governor.

By the Governor,

\_\_\_\_\_,  
Secretary of State.

[No. 8. — *Rendition Warrant.*]

STATE OF NORTH DAKOTA.

EXECUTIVE DEPARTMENT.

*To the Sheriff, Coroner, or any other peace officer of, or any other county of the State of North Dakota, greeting.*

WHEREAS, his Excellency, Governor of the State of, has demanded of the Governor of this State, charged with the crime of, as a fugitive from justice from the said State of, and has complied with the requirements of the act of Congress in such case made and provided;

Now, therefore, I, \_\_\_\_\_, Governor of the State of North Dakota, in the name and by the authority of the people thereof, by this, my warrant, do authorize and require you to arrest the aforesaid, anywhere within the limits of the State, and cause to be safely kept and delivered to who is duly authorized by the Governor of said State of to receive, the said agent paying all the fees and charges for the arrest and detention of the said fugitive.

And I do hereby command all sheriffs, coroners, constables, and other officers of this State, to whom this warrant may be shown, to aid and assist in the execution thereof, and that you certify to me your proceedings under the same.

In testimony whereof, I have hereunto set my hand, and caused to be affixed the Great Seal of the State of North Dakota.

Done at Bismarck, the capital of said State, this            day  
of            , in the year of our Lord one thousand eight hundred  
and            .

By the Governor,

\_\_\_\_\_,

*Secretary of State.*

[No. 4. — *Authority to Foreign Agent.*]

STATE OF NORTH DAKOTA.

To            , *Agent of the State of*            .

WHEREAS, a demand has been made on the Governor of the State of North Dakota by the executive authority of the State of            , for the delivery of            , now alleged to be within the jurisdiction of this State as a fugitive from the justice of said State of            , as defined by the Constitution and laws of the United States ;

And whereas, such demand is accompanied by the copy of an            , charging said            with having committed the crime of            , the same having been certified to be authentic by the Governor of said State of            ;

Now, therefore, I, \_\_\_\_\_, Governor of the State of North Dakota, do, by this my warrant, authorize and empower you, if such fugitive is not held in custody or under bail to answer any offence against the laws of the United States or of this State, forthwith to take and transport said            to the line of this State at your own expense ; and I do hereby require all peace officers to whom this warrant may be shown to afford you all needful assistance in the execution hereof, at your expense.

In testimony whereof, I have hereunto set my hand, and caused to be affixed the Great Seal of the State of North Dakota.

**By the Governor,**

# OHIO.

thereof as the Governor may require. Fugitive convicts shall also be so surrendered and demanded upon sworn evidence, duly authenticated, satisfactory to the Governor.

SECT. 96. When such demand or application is made, the Attorney-General, or the prosecuting attorney of any county shall, if the Governor requires it, forthwith investigate the grounds thereof, and report to the Governor all the material facts which may come to his knowledge, with an abstract of the evidence in the case, — and, especially in case of a person demanded, whether he is held in custody or is under recognizance to answer for any offence against the laws of this State, or by force of any civil process, — with an opinion as to the legality and necessity of complying with the demand or application.

SECT. 97. If in case of demand for surrender of a person charged with an offence committed in another State or Territory, the Governor decides that it is proper to comply with the demand, he shall issue a warrant to the sheriff of the county in which such person so charged may be found, commanding him forthwith to arrest and bring such person before a judge of the Supreme Court, of the Circuit Court, or of the common pleas court, to be examined on the charge; and upon the return of the warrant by the sheriff, with the person so charged in custody, the judge before whom the person so arrested is brought, and to whom the warrant is returned, shall proceed to hear and examine such charge, and upon proof made in such examination, by him adjudged sufficient, shall commit such person to the jail of the county in which such examination is so had, for a reasonable time, to be fixed by the judge in the order of commitment, and thereupon shall cause notice to be given to the executive authority making such demand, or to the duly authorized agent of such executive authority appointed to receive the fugitive; and on payment of all costs, *and the depositing of a sum of money with the clerk of such court, equal to ten cents a mile from the place where such arrest has been made, to the proper place for the prosecution of such supposed fugitive, by such agent,* such fugitive shall be delivered to him to be thence removed to the proper place for prosecution; and if such agent does not appear within the time so fixed and pay the costs, *and make such deposit,* the sheriff shall discharge the person so imprisoned. *In case the supposed fugitive should not be found guilty of the crime charged in the warrant for his arrest, such deposit shall be paid to him,*

*but upon the conviction of such fugitive of the crime so charged, such sum shall be paid to the agent making the deposit.*

SECT. 7156. When an affidavit is filed before a judge of a court of common pleas, or a judge of probate or police court, or a justice of the peace, setting forth that a person charged with the commission of an offence against the laws of any other State, or of any of the Territories of the United States, and which, if the act had been committed in this State, would, by the laws thereof, have been a crime, is, at the time of filing such affidavit, within the county where the same is filed, such judge or justice of the peace shall issue his warrant, directed to the sheriff or any constable of the county, commanding him forthwith to arrest and bring before him the person so charged.

SECT. 7157. When a person is arrested in pursuance of the preceding section, and brought before the officer who issued the warrant, the officer shall hear and examine such charge, and, upon proof by him adjudged to be sufficient, commit such person to the jail of the county in which such examination is had, or cause him to be delivered to a suitable person to be removed before any such judge or justice of the proper county in which to take such examination, who shall take the same, and proceed as if the warrant had been issued by him.

SECT. 7158. When a person is committed to jail by a judge or justice of the peace, under the preceding section, such judge or justice of the peace shall forthwith give notice, by letter or otherwise, to the sheriff of the county in which such offence was committed, or to the person injured by such offence; and no person so committed shall be detained longer in jail than is necessary to allow a reasonable time to the persons so notified, after they receive such notice, to apply for and obtain the proper requisition for the person so committed.

[Rev. Stats. of Ohio, 1880, vols. i. and ii. pp. 205, 1686. These sections are all found with the same numbers in Smith & Benedict's verified Revised Statutes of Ohio, 1890. Sections 920 and 1310, R. S. 1880, provide for payment of expenses by county commissioners.]

An Act to amend section 95 of the Revised Statutes of Ohio.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That section ninety-five (95) of the Revised Statutes of Ohio be amended so as to read as follows: —

**SECT. 95.** The Governor, in any case authorized by the Constitution of the United States, may, on demand, deliver over to the executive authority of any other State or Territory any person charged therein with treason, felony, or other crime committed therein; and he may, on application, appoint an agent to demand of the executive authority of any other State or Territory any person charged with felony who has fled from the justice of this State; but such demand or application must be accompanied by sworn evidence that the party charged is a fugitive from justice, and that the demand or application is made in good faith, for the punishment of crime, and not for the purpose of collecting a debt or pecuniary mulct, or of removing the alleged fugitive to a foreign jurisdiction with a view there to serve him with civil process; and also by a duly attested copy of an indictment or an information, or a duly attested copy of a complaint made before a court or magistrate authorized to take the same, such complaint to be accompanied by an affidavit or affidavits to the facts constituting the offence charged, by persons having actual knowledge thereof, and such further evidence in support thereof as the Governor may require. Fugitive convicts shall also be so surrendered and demanded, upon sworn evidence, duly authenticated, satisfactory to the Governor.

**SECT. 2.** That original section ninety-five (95) is hereby repealed and this act shall take effect upon its passage.

Passed March 11, 1881.

[78 Laws of Ohio, 1881, p. 49.]

An Act to amend section 95 of the Revised Statutes of Ohio, as amended March 11, 1881.

**SECTION 1.** *Be it enacted, etc.,* That section ninety-five of the Revised Statutes of Ohio, as amended March 11, 1881, be amended to read as follows:—

**SECT. 95.** The Governor, in any case authorized by the Constitution of the United States, may, on demand, deliver over to the executive authority of any other State or Territory, any person charged therein with treason, felony, or other crime committed therein, and he may, on application appoint an agent to demand of the executive authority of any other State or Territory any person charged with felony who has fled from justice in this State; but such demand or application must be accompanied by sworn



evidence that the party charged is a fugitive from justice, and that the demand or application is made in good faith, for the punishment of crime, and not for the purpose of collecting a debt or pecuniary mulct, or of removing the alleged fugitive to a foreign jurisdiction with a view there to serve him with civil process; and also by a duly attested copy of an indictment or an information, or duly attested copy of a complaint made before a court or magistrate authorized to take the same, such complaint to be accompanied by an affidavit or affidavits to the facts constituting the offence charged, by persons having actual knowledge thereof; the same shall also be accompanied by a statement in writing from the prosecuting attorney of the proper county, who shall briefly set forth all the facts of the case, the reputation of the party or parties asking such requisition, and whether, in his opinion, such requisition is sought from improper motives, or in good faith to enforce the criminal laws of Ohio, and such further evidence in support thereof as the Governor may require. Fugitive convicts shall also be so surrendered and demanded upon sworn evidence, duly authenticated, satisfactory to the Governor. For issuing such requisition, fees, not to exceed five dollars, may be charged.

SECT. 2. That said section 95, as amended March 11, 1881, be and the same is hereby repealed.

SECT. 3. This act shall take effect and be in force from and after its passage.

Passed February 21, 1884.

[81 Laws of Ohio, 1884, pp. 23, 24.]

An Act for the extradition of fugitives from justice fleeing to foreign countries.

SECTION 1. *Be it enacted, etc.*, That whenever it shall be made to appear to the Governor by sworn evidence, in writing, that any person has committed any crime within the State of Ohio, for which by the provisions of any law of the United States, or of any treaty between the United States and any foreign government, such person may be delivered to the United States or its authorities, by any such foreign government or its authorities, and that such person is a fugitive from the justice of the State of Ohio and may be found within the territory of any such foreign government, it shall be the duty of the Governor, under the great seal of Ohio, to request the

President of the United States, or the Secretary of State of the United States, to take any steps necessary for the extradition of such person from such foreign territory, and his delivery to any agent of the State of Ohio whom the Governor may appoint to receive him, or to the proper officer of the county within which he may be charged with such crime. *Provided*, that before any such request be made by the Governor, he shall be satisfied by sworn evidence, in writing, that such extradition is sought in good faith for the punishment of such crime only, and not for the purpose of collecting a debt or pecuniary mulct, nor of bringing the alleged fugitive within the State of Ohio with the view to serve him with civil process, or with criminal process other than for the crime for the commission of which his extradition may be sought.

SECT. 2. This act shall take effect and be in force from and after its passage.

Passed April 14, 1884.

[§1 Laws of Ohio, p. 208. This statute forms section 8035-241 of Smith & Benedict's verified Revised Statutes of Ohio, 1890, vol. ii. p. 2674. This act is printed here, though it relates to extradition, and not to interstate rendition.]

SECT. 97. If in case of demand for the surrender of a person charged with an offence committed in another State or Territory, the Governor decides that it is proper to comply with the demand, he shall issue a warrant to the sheriff of the county in which such person so charged may be found, commanding him forthwith to arrest and bring such person before a judge of the Supreme Court, of the circuit court, or of the common pleas court, to be examined on the charge; and upon the return of the warrant by the sheriff, with the person so charged in custody, the judge before whom the person so arrested is brought, and to whom the warrant is returned, shall proceed to hear and examine such charge, and upon proof made in such examination by him adjudged sufficient, shall commit such person to the jail of the county in which such examination is so had, for a reasonable time, to be fixed by the judge in the order of commitment, and thereupon shall cause notice to be given to the executive authority making such demand, or to the duly authorized agent of such executive authority appointed to receive the fugitive; and, on payment of all costs by such agent, such fugitive shall be delivered to him to be thence removed to the

proper place for prosecution ; and if such agent does not appear within the time so fixed and pay the costs as aforesaid, the sheriff shall discharge the person so imprisoned.

[82 Laws of Ohio, 1885, pp. 16, 17.]

An Act to amend section 97 of the Revised Statutes of Ohio, as amended February 7, 1885 (O. L., v. 82, p. 16).

SECTION 1. *Be it enacted, etc.*, That section 97 of the Revised Statutes of Ohio be amended so as to read as follows : —

SECT. 97. If in case of demand for surrender of a person charged with an offence committed in another State or Territory, the Governor decides that it is proper to comply with the demand, he shall issue a warrant to the sheriff of the county in which such person so charged may be found, commanding him forthwith to arrest and bring such person before a judge of the Supreme Court, of the circuit court, or of the common pleas court, to be examined on the charge ; and upon the return of the warrant by the sheriff, with the person so charged in custody, the judge before whom the person so arrested is brought, and to whom the warrant is returned, shall proceed to hear and examine such charge, and upon proof made in such examination, by him adjudged sufficient, shall commit such person to the jail of the county in which such examination is so had, for a reasonable time to be fixed by the judge in the order of commitment, and thereupon shall cause notice to be given to the executive authority making such demand, or to the duly authorized agent of such executive authority appointed to receive the fugitive ; and on payment of all costs, and the depositing of a sum of money with the clerk of such court, equal to ten cents a mile from the place where such arrest has been made, to the proper place for the prosecution of such supposed fugitive by such agent, such fugitive shall be delivered to him to be thence removed to the proper place for prosecution ; and if such agent does not appear within the time so fixed and pay the costs and make such deposit, the sheriff shall discharge the person so imprisoned. In case the supposed fugitive should not be found guilty of the crime charged in the warrant for his arrest, such deposit shall be paid to him, but upon the conviction of such fugitive of the crime so charged, such sum shall be paid to the agent making the deposit.

SECT. 2. That section 97, as amended February 7, 1885 (O. L., v. 82, p. 16), be and the same is hereby repealed.

SECT. 3. This act shall take effect and be in force on the first day of September, 1887.

Passed March 21, 1887.

[84 Laws of Ohio, 1887, pp. 228, 229.]

### REQUISITIONS.

The following "Remarks" and rules relating to applications for requisitions are taken from a circular issued by the Governor of Ohio: —

#### *Remarks.*

1. With the exception of what is mentioned in the next paragraph, the papers required by the statutes of Ohio to be attached to a requisition are the same as are required by the statutes and regulations of other States and the statutes of the United States. There must be a copy of the indictment, information, or complaint, upon which the requisition is based, duly authenticated, — that is to say, a copy of an indictment or information, certified to be such by the clerk of the court in which the original is filed, or a copy of a complaint, certified to be such by the magistrate in whose office the original is filed, and the official character of the magistrate certified by the clerk of court or other proper officer.

2. The exception referred to in the preceding paragraph is that, *in a case of complaint*, the copy of the instrument must be accompanied by "an affidavit, or affidavits, to the facts constituting the offence charged, by persons having actual knowledge thereof." The General Assembly intended by this requirement to provide against imposition in cases which have not been investigated by a grand jury, and to secure, under oath, such evidence as would justify an indictment, and as shall leave no reasonable doubt as to the guilt of the accused and the character of the offence. The affidavit or affidavits should set forth all known facts and circumstances having a bearing upon a case.

3. The word "information," in section 95, refers only to informations filed in the office of the clerk of the court, upon which crimes are prosecuted in lieu of indictments. In some States, affidavits, which, in Ohio, are known as *complaints*, are termed *infor-*

*mations*. These are treated as complaints, and copies thereof must be accompanied by "an affidavit or affidavits to the facts constituting the offence charged," etc., as stated above.

4. In all cases an affidavit substantially as follows is required: That the person for whom the requisition is made is a fugitive from justice, and that the requisition for his extradition is made in good faith, with the sole intent to prosecute him for the offence charged, and not to secure his presence in the demanding State with the view there to serve him with civil process, nor for any other private purpose. This seems to be required by all the States.

5. Judges before whom alleged fugitives are taken for examination, require either duplicates or copies of all papers attached to a requisition. It is a saving of both time and expense when agents are supplied with duplicates before leaving home, as the necessity of making copies is avoided.

6. Sections 7156, 7157, and 7158 provide for the arrest of fugitives in the absence of an extradition warrant, and their commitment for *a reasonable time* to apply for and obtain a requisition. When there is danger of the escape of a fugitive before he can be served with an extradition warrant, it is suggested that the agent request the Ohio officer with whom he is in communication to proceed under said sections.

7. Attention is called to the italicized portions of section 97, as being made supplementary to said section by act of March 21, 1887, the same to go into effect September 1, 1887.

#### APPLICATIONS FOR REQUISITIONS.

1. Applications must be made by the prosecuting attorney, except in cases of convicts escaped from the penitentiary.

2. The statutes of Ohio provide for requisitions in cases of felony only; but the Governor may issue extradition warrants without regard to our classification of offences.

3. Applications and accompanying papers must be in duplicate.

4. The prosecuting attorney must designate a person to be appointed agent. As a rule, the sheriff should be designated; and whoever the person may be, he should be instructed not to permit a compromise of the case under any circumstances.

5. The employment of the extradition process as a means of collecting debts, in cases of real or assumed false pretence, is so

general that a proper use of it is a rare exception. Creditors invoke the process with no other purpose in view. This abuse has been carried to such an extent that the Governors of the several States feel the necessity of putting an end to it; and even the refusal to either demand or surrender fugitives so charged has been suggested as the only sure remedy. Prosecuting attorneys will, therefore, notify persons who request them to make application in cases of this kind, that the Governor will not issue a requisition unless convinced that the sole intention is to prosecute the alleged fugitives for the offence charged.

6. Every application must be accompanied by the affidavit required by statute, as to the purpose for which the extradition of the fugitive is desired. It should be made by the prosecuting attorney, because the prosecution is under his control.<sup>1</sup> In all cases

<sup>1</sup> The forms of application, affidavit, and authentication under this rule are as follows:—

PROSECUTING ATTORNEY'S OFFICE,

, 189 .

*Hon.* , *Governor of the State of Ohio:*

DEAR SIR, — I have the honor to request that you issue a requisition upon the Governor of the of for the extradition of , who stand charged with the crime of , committed in this county on the day of , 189 , and who, to avoid prosecution, fled from the jurisdiction of this State, and, as I am informed, now within the jurisdiction of said , of . . .

I present herewith a copy of said duly authenticated ; affidavit as to the purpose for which the extradition of the fugitive is desired; and affidavit to the facts constituting the offence charged, by person having actual knowledge thereof.\*

I designate as a proper person to be appointed agent of the State, and certify that he has no personal interest in the arrest and return of said fugitive other than proper compensation for his services.

Very respectfully,

\_\_\_\_\_,  
Prosecuting Attorney,  
County, Ohio.

THE STATE OF OHIO, }  
County, } ss.

I, , having been duly sworn, depose and say that I am the Prosecuting Attorney for said County ; that the person charged by (a duly authenticated copy of which is attached hereto) with the crime of fugitive from justice ; and that the foregoing application to the Gov-

\* The last clause to be erased in case of indictment.

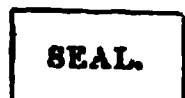
of fraud, false pretences, embezzlement, or forgery, however, the affidavit of the principal complaining witness that the application is made in good faith, etc., will also be required, or a sufficient reason be given for the absence of such affidavit. These affidavits are printed on the same sheet with the blank application, and should be made before the clerk of court, to facilitate authentication by the Governor, as he can make one certificate cover the whole case.

7. If the offence charged is not of recent occurrence, a satisfactory reason must be given for the delay in making the application. (See paragraph 16.)

8. Requisitions will be issued only upon the condition that no portion of the expense pertaining to the extradition shall be paid by the State.

9. Requisitions will be recalled, and warrants revoked, when it is discovered that fraud or deception has been practised.

ernor of Ohio for a requisition for                      extradition is made in good faith, with the sole intent to prosecute                      for said offence, and not to secure                      return to said county to afford opportunity to serve                      with civil process, nor for any other private purpose.



Sworn to before me, and subscribed in my presence, the  
day of                      , 189 .

\_\_\_\_\_  
*Clerk of the Court of Common Pleas,*  
*County, Ohio.*

THE STATE OF OHIO, \*  
OFFICE OF THE GOVERNOR. }

I,                      , Governor of the State of Ohio, do hereby certify that                      , whose signature and official seal are affixed to the certificate of authentication hereto attached, and also to the foregoing jurat, was, at the date thereof, Clerk of the Court of Common Pleas of                      County, State of Ohio, duly                      , commissioned, and qualified, and that his official acts are entitled to full faith and credit.

In testimony whereof, I have hereunto subscribed my name, and caused the Great Seal of the State of Ohio to be affixed, at the city of Columbus, the day of                      , in the year of our Lord one thousand eight hundred and ninety                      , and in the one hundred and                      year of the Independence of the United States of America.

By the Governor,

\_\_\_\_\_  
*Secretary of State.*

*In case of Indictment.*

10. When the application is based upon an indictment, the only papers required are the application, copy of indictment duly authenticated, and affidavit mentioned in the 6th paragraph, — all in duplicate.

*In case of Complaint.*

11. When based upon a complaint, duplicate copies of the instrument, certified and authenticated as specified in paragraphs 15 and 18, and affidavits (in duplicate) specified in paragraphs 6 and 14, must accompany the application.

12. Although mayors and police judges are magistrates, under the statutes of Ohio, complaints upon which requisitions are to be made should be made before *justices of the peace only*, because (1) justices are recognized everywhere, *without question*, as magistrates, and because (2) this is essential to a due authentication, — neither the Governor nor clerks of courts of common pleas having official knowledge of the election and qualification of mayors and police judges.

13. In some counties, the practice of making affidavits before notaries public, and filing them with justices of the peace as complaints, prevails. This is certainly not based upon a correct interpretation of the statutes of Ohio; and besides, the statutes of the United States, which govern in the matter of extradition, provide that complaints *shall be made before a magistrate*.

14. The statute requires, in case of complaint, “an affidavit or affidavits, to the facts constituting the offence charged, by persons having actual knowledge thereof.” The meaning of this is, that an affidavit or affidavits giving in detail all known facts and circumstances having a bearing upon a case, shall be furnished, in support of and to strengthen the complaint, which, generally and properly, is simply a brief statement charging the offence, and by whom, when, where, and by what means it was committed. If no person other than the complainant possesses the necessary information, there can, of course, be but one such affidavit. These affidavits to be *originals* and *in duplicate*.

15. The copies of the complaint which accompany the application must be certified by the justice of the peace before whom the complaint was made, to be true copies of the original instrument on file in his office. Sometimes the original complaint is taken in



triplicate, and two of them transmitted with the application, under the mistaken notion that they are better than copies ; but the statute requires *certified copies*.

16. An application based upon a complaint, when there has been a session of the Grand Jury after the commission of the offence, and an opportunity afforded thereby to procure an indictment, will be regarded with disfavor, and a satisfactory explanation of the failure to procure an indictment will be required.

#### *Authentication.*

17. In case of indictment, the clerk of court must make duplicate copies of the instrument, and certify, under his official seal, that each is a true copy of the original indictment on file in his office.

18. In case of complaint, the clerk of court must attach to each copy of the instrument, following the certificate of the justice of the peace, the usual certificate as to the election, qualification, etc., of that officer. This must not be omitted upon the theory that such certificate can be made by the Governor or Secretary of State, as the statute (vol. lxxx., O. L., p. 186) provides that "no officer other than the clerk of court of common pleas shall certify to the signature and qualification of justices of the peace."

19. The certificates referred to in the last two paragraphs should, invariably, be signed by the clerk himself, as the papers must receive a final authentication by the Governor, who has no official knowledge of the appointment of deputies. Although the clerk's seal imports verity, and is, therefore, for general purposes, a sufficient verification when used by a deputy, the Governor, in a case where a deputy signs the name of the clerk, can certify only as to the statutory authority of deputies, and that the principal is clerk ; but in such case, or where a deputy makes the certificate himself, he cannot certify that such person is deputy-clerk. *Extradition papers undergo the scrutiny of able lawyers, especially when the surrender of a fugitive is resisted ; and opportunity must not be afforded them to defeat or delay justice, and cause unnecessary expense upon a claim of insufficiency in any respect.*

#### *Arrest and Commitment in the absence of an Extradition Warrant.*

20. Fugitive criminals from other States sometimes avoid arrest after they are discovered, or secure their release, after arrest, be-

cause of delay in obtaining a requisition. Such escape or release may be prevented by proceedings under sections 7156, 7157, and 7158 of the Revised Statutes of Ohio.

*Renewal of Application.*

21. Upon the renewal of an application, for example: on the ground that the fugitive has fled to another State, not having been found in the State on which the first was granted, new or certified copies of papers, in conformity with the above rules, must be furnished.

*References.*

22. The sections of the Revised Statutes of Ohio relating to the extradition of fugitives are 95, 96, 97, 7156, 7157, and 7158. Section 95 has been amended since the revision of the statutes, and will be found in vol. lxxxi., O. L., p. 23. Also, see vol. lxxxi., O. L., p. 208.

23. The sections of the Revised Statutes of the United States upon the subject will be found in Vol. I. of the Revised Statutes of Ohio, pages 162, 163, and 164.

24. The latest and one of the best authorities upon this subject is "The Law of Extradition, International and Inter-State," by Samuel T. Spear, D. D.

The foregoing instructions should be studied carefully, filed for reference, and followed strictly, in order that mistakes, delays, and unnecessary expense may be avoided. *A failure to follow them will necessitate the return of the papers.*

## FORMS OF WARRANTS.

[No. 1. — *Requisition.*]

STATE OF OHIO.

EXECUTIVE DEPARTMENT.

*To his Excellency, the Governor of*

WHEREAS, it appears by the annexed papers, which I hereby certify to be authentic and to be duly authenticated in accordance

with the laws of this State, that stand charged  
by with the crime of , committed in  
the County of , in this State, and it has been repre-  
sented to me that he ha fled from the justice of this State, and  
taken refuge within the State of .

Now therefore, pursuant to the provisions of the Constitution  
and laws of the United States, in such case made and provided, I  
do hereby make requisition for the apprehension of said fugitive  
and for delivery to , the agent of this State,  
duly appointed and commissioned to receive and convey  
to the county aforesaid, there to be dealt with in accordance with  
law.

In testimony whereof, I have hereunto subscribed my name and  
caused the Great Seal of the State of Ohio to be affixed, at Colum-  
bus, the day of , in the year of our Lord one  
thousand eight hundred and ninety , and in the one hundred  
and year of the Independence of the United States of  
America.

By the Governor,

\_\_\_\_\_,  
Secretary of State.

[No. 2. — Agent's Warrant.]

IN THE NAME AND BY THE AUTHORITY OF THE  
STATE OF OHIO.

\_\_\_\_\_, Governor of said State, to all to whom these  
presents shall come, greeting.

WHEREAS, ha been charged by  
with committing the crime of within the County of ,  
in this State, and ha , by a requisition of this date, been demanded  
of the Governor of the State of , as fugitive from  
justice ;

Therefore, I do hereby appoint to be the agent of  
this State, to receive the said from the executive  
authority of the State of , and to convey to the  
said County of , to be tried for the offence aforesaid,  
according to law.

In testimony whereof, I have hereunto subscribed my name, and

caused the Great Seal of the State of Ohio to be affixed, at Columbus, the            day of           , in the year of our Lord one thousand eight hundred and ninety-           , and in the one hundred and            year of the Independence of the United States of America.

By the Governor.

\_\_\_\_\_,  
Secretary of State.

[No. 3. — Rendition Warrant.]

IN THE NAME AND BY THE AUTHORITY OF THE  
STATE OF OHIO.

\_\_\_\_\_, Governor of said State, to all to whom these presents shall come, greeting.

To the Sheriff of            County:

WHEREAS, requisition has been made upon me by the Governor of the State of            for the extradition of           , alleged fugitive from the justice of said State of           , charged with the crime of           , as appears by a copy of           , duly authenticated, and attached to the requisition aforesaid;

Therefore, I do hereby command you forthwith to arrest the said           , and bring            before any Judge of the Supreme Court, Circuit Court, or Court of Common Pleas of this State, in whose district or jurisdiction            may be found, to be dealt with as provided by law; and, on this warrant, if so directed by such judge, to deliver            to           , the agent appointed by the Governor of the State of            to receive           ; and of this warrant, with your proceedings thereunto, make due return according to law.

In testimony whereof, I have hereunto subscribed my name, and caused the great Seal of the State of Ohio to be affixed, at Columbus, the            day           , in the year of our Lord one thousand eight hundred and ninety           , and in the one hundred and            year of the Independence of the United States of America.

By the Governor.

\_\_\_\_\_,  
Secretary of State.

## OREGON.

**SECTION 1695 [487].<sup>1</sup>** Whenever a person charged with treason, felony, or other crime in this State shall flee from justice, the Governor of this State may appoint an agent to demand such fugitive of the executive authority of any State or Territory of the United States in which he may be found.

**SECT. 1696 [488].** Before appointing such agent, the Governor may require the district attorney of the county to investigate the matter and report to him the material circumstances, together with his opinion upon the expediency of allowing the application.

**SECT. 1697 [489].** The account of the agent, embracing his actual expenses incurred in performing the service, must be paid by the State, after being audited and allowed as other claims against the State.

**SECT. 1698 [490].** A person charged in any State or Territory of the United States with treason, felony, or other crime, who shall flee from justice and be found in this State, must, on demand of the executive authority of the State or Territory from which he fled, be delivered up by the Governor of this State, to be removed to the State or Territory making the demand.

**SECT. 1699 [491].** When the person demanded is in custody in this State, either upon a criminal charge, an indictment for a crime, or a judgment upon a conviction thereof, he cannot be delivered up until he is legally discharged from such custody; but if he be in custody upon civil process only, the Governor may deliver him up or not before the termination of such custody, as he may deem most conducive to the public good.

**SECT. 1700 [492].** Before issuing a warrant for the delivery of a fugitive from justice, the Governor may require the district attorney of the county to ascertain and report to him whether such fugitive is in custody as mentioned in the last section, and if he be so upon civil process only, whether such custody be with the consent or procurement of the fugitive.

**SECT. 1701 [493].** When the Governor finds that the demand is conformable to law, and the person demanded should be given up, either then or at some future time, if he be in custody, he must

<sup>1</sup> The sections in brackets refer to the Code of Criminal Procedure of Oct. 19, 1864.

issue his warrant, under the seal of the State and attested by the Secretary of State, directed to the person who makes the demand, and authorizing him, either forthwith or at some future time therein designated, to take and transport the fugitive to the border line of the State.

SECT. 1702 [494]. The executive warrant must also require all peace officers and magistrates, when requested by the person to whom the warrant is directed, to render all needful assistance in the execution thereof, and in so doing, such officers or magistrates may exercise the same power and authority to prevent a rescue, an escape, or to effect a recapture, as if the fugitive was in arrest upon a charge of crime committed in this State.

SECT. 1703 [495]. A magistrate authorized to issue a warrant of arrest may issue a warrant for the arrest of a person charged as provided in section 1698 [490] who shall flee from justice and be found in this State.

SECT. 1704 [496]. The proceedings for the arrest and commitment of the person charged are in all respects similar to those provided in this code for the arrest and commitment of a person charged with a crime committed in this State, except that an exemplified copy of an indictment found, or other judicial proceedings had against him, in the State or Territory in which he is charged to have committed the crime, may be received as evidence before the magistrate.

SECT. 1705 [497]. If from the examination it appear that the person charged has committed the crime alleged, the magistrate must commit him to the proper custody in his county for a time specified in the commitment, which the magistrate deems reasonable, to enable the arrest of the fugitive under the warrant of the executive authority of the State on the requisition of the executive authority of the State or Territory in which he committed the crime, or until he be legally discharged, unless he give bail as provided in the next section.

SECT. 1706 [498]. The magistrate may admit the person arrested to bail by an undertaking, with sufficient sureties and in such an amount as he deems proper, for his appearance before him at a time specified in the undertaking, and for his surrender to be arrested upon the warrant of the Governor of this State.

SECT. 1707 [499]. Immediately upon the commitment of the person charged, the magistrate must inform the Governor of this

State of the name of the person, the cause of the arrest, and his commitment; and the Governor must thereupon give the like notice to the executive authority of the State or Territory having jurisdiction of the crime, to the end that a demand may be made for the arrest and surrender of the person charged.

SECT. 1708 [500]. The person arrested must be discharged from custody or bail unless, before the expiration of the time designated in the warrant or undertaking, he be arrested under the warrant of the Governor of this State.

SECT. 1709 [501]. The person making the complaint to the magistrate is liable for the costs and expenses of the proceeding, and for the support in the jail of the person so committed; and unless he advance to the jailer, from week to week during the commitment, a sum sufficient for such support, the jailer may, upon the order of any magistrate of the county, discharge such person from custody.

[Hill's Annotated Laws of Oregon, 1887; Criminal Procedure, tit. 1, chap. xlii. pp. 880-885.]

## APPLICATION FOR REQUISITION.

### STATE OF OREGON.

#### EXECUTIVE OFFICE.

SALEM, March 1, 1887.

The following regulations of the Executive Department are hereby published for general information:—

#### REQUISITIONS.

An application to the Governor of this State for a requisition upon the Governor of another State, or of a Territory, for the rendition of an alleged fugitive, must, if the person whose rendition is sought has been indicted, be accompanied by the following documents in *duplicate*:—

1. A duly attested copy of the indictment, made by the clerk of the court having jurisdiction to try the party charged.

2. An affidavit, or affidavits, that the party charged is a fugitive from justice and that the demand is made in good faith, for the punishment of crime, and not for the purpose of collecting a debt, or of removing the alleged fugitive to a foreign jurisdiction with

a view there to serve him with a civil process, or for any pecuniary or private end.

In case no indictment has been presented against the person whose rendition is sought, but the application is based upon an information or complaint made before an examining court or magistrate, such application must be accompanied by the following documents in *duplicate*:—

(1) A duly attested copy of the information or complaint made by the examining magistrate.

(2) An affidavit, or affidavits, as specified in paragraph 2, above.

(3) An affidavit, or affidavits, to the facts constituting the offence charged by persons having actual knowledge thereof.

(4) A certificate from the magistrate before whom the complaint was made that, in his opinion, the character of the complainant, and the merits of the case presented, warrant the application.

Each application must be accompanied also by a certificate of the district attorney of the district in which the offence is alleged to have been committed, showing all the material circumstances, together with his opinion upon the expediency of allowing the application.

In all cases the greatest care will be exercised by this department to ascertain beyond a doubt that the object in seeking a requisition *is not to collect a debt*, or to afford some person an opportunity to travel at the public expense, or to answer some other private end.

In all cases of false pretence, embezzlement, conspiracy, and similar crimes, the strongest affirmative evidence will be required, that the real object is not the collection of a private debt.

If the offence is not of recent occurrence, sufficient reason must be given why the application has been delayed.

Requisitions will not be granted upon two or more States at the same time for the rendition of the same person.

In all cases of rejected applications the papers will be retained in this department.

SYLVESTER PENNOYER,

*Governor of the State of Oregon.*



## FORMS OF WARRANTS.

[No. 1. — *Requisition and Agent's Warrant.*]

## STATE OF OREGON.

## EXECUTIVE DEPARTMENT.

*To his Excellency, the Governor of the* .

It appearing to me, ——— ———, Governor of the State of Oregon, that one ——— stands charged with the crime of ———, committed in the County of ———, State of Oregon, as evidence of which ———. And it also appearing that the said ——— has fled the State of Oregon and is believed to be within the limits of the ———;

Now, therefore, in the name and by the authority of the State of Oregon, and in virtue of the rights and privileges secured and guaranteed by the laws and Constitution of the United States, I do hereby require and demand of his Excellency the Governor of the ———, that he cause the said ——— to be surrendered and delivered up to the justice of the State from which he has fled, if to be found within the jurisdiction of the ———. And I have appointed, and do by these presents, constitute and appoint ———, as agent of the State of Oregon, to receive and convey back the said fugitive, to be delivered into the custody of the sheriff of ——— County aforesaid.

Witness my hand and the Seal of State, at Salem, this day of ———, A. D. 189 .

—————, *Governor.*

By the Governor,

—————, *Secretary of State.*

[No. 2. — *Rendition Warrant.*]

## STATE OF OREGON.

## EXECUTIVE DEPARTMENT.

*State of Oregon, to any Sheriff, Constable, Marshal, or Policeman in this State, greeting.*

WHEREAS, requisition has been received by me from \_\_\_\_\_, Governor of \_\_\_\_\_, for the surrender of one \_\_\_\_\_; and whereas, it is made known to me by said requisition \_\_\_\_\_, charging him, the said \_\_\_\_\_, with the crime of \_\_\_\_\_, committed within the limits of the said \_\_\_\_\_;

And whereas, a copy of said \_\_\_\_\_, duly authenticated, is attached to said requisition, which said copy of said \_\_\_\_\_ is certified to be authentic by the Governor of said \_\_\_\_\_;

And whereas, it is further made to appear to me that said \_\_\_\_\_ is a fugitive from justice from said \_\_\_\_\_, and has taken refuge in this State;

And whereas, the said Governor of \_\_\_\_\_ has appointed and duly constituted \_\_\_\_\_, the agent of the said \_\_\_\_\_, to receive said \_\_\_\_\_, and to transport him to the \_\_\_\_\_, in accordance with said requisition;

Now, therefore, I, \_\_\_\_\_, Governor of the State of Oregon, by virtue and in pursuance of the power and authority in me vested by the Constitution and laws of the United States, and the laws of this State, command you forthwith to arrest the said \_\_\_\_\_, if he be found within the limits of this State, and safely secure and deliver him into the custody of the said \_\_\_\_\_, the agent of said \_\_\_\_\_, to be by him transported to the \_\_\_\_\_, to be tried for the crime of \_\_\_\_\_, he, the said \_\_\_\_\_, defraying all costs and expenses incurred in the apprehension, securing, and conveying of said fugitive.

Witness my hand, and the Seal of State, at Salem, this day of \_\_\_\_\_, A. D. 189 .

\_\_\_\_\_,  
Governor.

By the Governor,

\_\_\_\_\_,  
Secretary of State.

## PENNSYLVANIA.

An act to regulate proceedings under requisitions upon the Governor of this Commonwealth for the apprehension of fugitives from justice.

SECTION 1. *Be it enacted, etc.*, That on and after the passage of this act, it shall be the duty of the Governor of this Commonwealth, in all cases where by virtue of a requisition made upon him by the Governor of another State or Territory, any citizen, inhabitant or temporary resident of this Commonwealth is to be arrested as a fugitive from justice [provided that the said requisition be accompanied with a certified copy of the indictment or information, from the authorities of such other State or Territory, charging such person with any crime in such State or Territory], to issue and transmit a warrant for such purpose to the sheriff of the proper county, or other officer authorized by law to execute warrants, in which the requisition describes the party or parties to be residing or domiciled; and the sheriff or the deputy-sheriff, or other officer, as aforesaid, of the county, shall alone be competent to make service of the same.

SECT. 2. That before the sheriff or his deputy, or other officer, as aforesaid, shall deliver the person arrested into the custody of the officer or officers named in the requisition, it shall be the duty of the sheriff, or other officer, as aforesaid, to take the prisoner or prisoners before a judge of a court of record, who shall in open court, if in session, otherwise at chambers, inform the prisoner or prisoners of the cause of his or their arrest, the nature of the process, and instruct him or them that if he or they claim not to be the particular person or persons mentioned in said requisition, indictment, or affidavit, before a magistrate of said other State or Territory, charging said person with some crime, and warrant of arrest, he or they may have a writ of *habeas corpus*, upon filing an affidavit to that effect; *Provided however*, the investigation and hearing under said writ shall be limited to the question of identification, and shall not enter into the merits or facts of the charge or indictment, or information, accompanying or referred to in the requisition; and if, after due hearing, the prisoner or prisoners shall be found to be the parties indicted or informed against and

mentioned in the requisition or warrant, then the court shall order and direct the sheriff, or other officer as aforesaid, to deliver the prisoner or prisoners into the custody of the officer designated in the requisition as the agent upon the part of such State to receive him or them, otherwise to be discharged from custody by the court.

SECT. 3. It shall not be lawful for any person or officer to take any person or persons out of this Commonwealth, upon the ground that the prisoner or prisoners consent to go, or by reason of his or their willingness to waive the proceedings afore described ; and any person or persons who shall arrest or procure the arrest of any citizen, inhabitant, or temporary resident of this Commonwealth, for the purpose of taking him or sending him to another State, without a requisition first had and obtained, accompanied by a certified copy of the indictment or information, and without a warrant issued by or under the direction of the Governor of this Commonwealth, served by the sheriff or his deputy, and without first taking him before a judge of the court of record, as aforesaid, shall be guilty of a misdemeanor, and upon conviction be sentenced to one year imprisonment.

SECT. 4. Any violation of this act, on the part of the sheriff or his deputy, or other officer, as aforesaid, shall be deemed a misdemeanor in office.

SECT. 5. That nothing in this act shall be construed to prevent the sheriff of any county, or chief of police of any city, or other person, to cause the arrest of any person or persons, upon information of the offence or crime committed in another State, and that a warrant has there been issued for the arrest of the said party or parties, or has there been indicted ; *Provided*, The officers of any town, city, or county, or authorities of such other State or Territory, shall procure a requisition and have the same presented to the Governor of this Commonwealth, within fifteen days after the arrest shall have been made ; and the prisoner or prisoners, upon being arrested or detained, shall be brought before a court or judge, in the manner and for the purpose provided in the second section of this act ; *Provided*, Such person shall not be committed or held to bail for a longer period than fifteen days exclusive of the day of arrest, at the expiration of which time, if the sheriff has not received the requisition or warrant from the Governor of this Commonwealth, then the person or persons so arrested and detained shall be discharged from custody.

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**SECT. 6.** Any person giving false information under this act, with intent to injure any person or deprive him of his liberty, shall be liable to the penalties of the third section of this act.

**SECT. 7.** Any act or parts of acts inconsistent herewith are hereby repealed.

Approved the 24th day of May, A. D. 1878.

J. F. HARTRANFT.

### REQUISITIONS.

The application for the requisition must be made by the district or prosecuting attorney for the county or district in which the offence was committed, and must be in duplicate original papers or certified copies thereof.

The following must appear by the certificate of the district or prosecuting attorney : —

(a) The full name of the person for whom extradition is asked, together with the name of the agent proposed, to be properly spelled, in Roman capital letters, for example : JOHN DOE.

(b) That in his opinion the ends of public justice require that the alleged criminal be brought to this State for trial at the public expense.

(c) That he believes he has sufficient evidence to secure the conviction of the fugitive.

(d) That the person named as agent is a proper person, and that he has no private interest in the arrest of the fugitive.

(e) If there has been any former application for a requisition for the same person growing out of the same transaction, it must be so stated, with an explanation of the reasons for a second request, together with the date of such application, as near as may be.

(f) If the fugitive is known to be under either civil or criminal arrest in the State or Territory to which he is alleged to have fled, the fact of such arrest and the nature of the proceedings on which it is based must be stated.

(g) That the application is not made for the purpose of enforcing the collection of a debt, or for any private purpose whatever, and that if the requisition applied for be granted, the criminal proceedings shall not be used for any of said objects.

(h) The nature of the crime charged, with a reference, when practicable, to the particular statute defining and punishing the same.

(i) If the offence charged is not of recent occurrence, a satisfactory reason must be given for the delay in making the application.

1. In all cases of fraud, false pretences, embezzlement, or forgery, when made a crime by the common law, or any penal code or statute, the affidavit of the principal complaining witness or informant that the application is made in good faith, for the sole purpose of punishing the accused, and that he does not desire or expect to use the prosecution for the purpose of collecting a debt, or for any private purpose, and will not directly or indirectly use the same for any of said purposes, shall be required, or a sufficient reason be given for the absence of such affidavit.

2. Proof by affidavit of *facts and circumstances* satisfying the executive that the alleged criminal has fled from the justice of the State, and is in the State on whose executive the demand is requested to be made, must be given. The fact that the alleged criminal was in the State where the alleged crime was committed at the time of the commission thereof, and is found in the State upon which the requisition was made, shall be sufficient evidence, in the absence of other proof, that he is a fugitive from justice.

3. If an indictment has been found, certified copies, in duplicate, must accompany the application.

4. If an indictment has not been found by a grand jury, the *facts and circumstances* showing the commission of the crime charged, and that the accused perpetrated the same, must be shown by affidavits taken before a *magistrate* (a notary public is not a magistrate within the meaning of the statutes), and that a warrant has been issued and duplicate certified copies of the same, together with the returns thereto, if any, must be furnished upon an application.

5. The official character of the officer taking the affidavits or depositions and of the officer who issued the warrant must be duly certified.

6. Upon the renewal of an application, for example: on the ground that the fugitive has fled to another State, not having been found in the State on which the first was granted, new or certified copies of papers in conformity with the above rules must be furnished.

7. In the case of any person who has been convicted of any crime, and escapes after conviction, or while serving his sentence, the application may be made by the jailer, sheriff, or other officer having him in custody, and shall be accompanied by certified

copies of the indictment or information, record of conviction, and sentence, upon which the person is held, with the affidavit of such person having him in custody, showing such escape with the circumstances attending the same.

8. No requisition will be made for the extradition of any fugitive except in compliance with these rules.

### ADDITIONAL SUGGESTIONS.

1. At the Interstate Extradition Conference, held in New York, in August, 1887, it was resolved by the representatives of the several States: "That it is the sense of this Conference that the Governors of the demanding States discourage proceedings for the extradition of persons charged with petty offences, and that, except in special cases, under aggravating circumstances, no demand should be made in such cases."

2. Requisitions will not issue in cases of fornication and bastardy, desertion (except under special and aggravated circumstances), nor in any case to aid in collecting a debt or enforcing a civil remedy, nor in cases in which the offence is of such a trivial character as to leave a doubt as to the issuing of a mandate thereon by the executive of another State or Territory; nor in a case of seduction, until an indictment is found and the relations of the parties clearly established, so as to leave no doubt that the case is one of seduction, and not of fornication and bastardy.

3. Requisitions will not be issued on petition alone, but the copies of record and affidavits required by the preceding rules must in every case be furnished; and this regulation will be applied with special strictness in all cases where the charge is cheating, obtaining money by false pretences, embezzlement, and the like. False and deceitful representations must be particularly set forth.

4. All papers presented in connection with an application for a requisition must be in duplicate.

5. The agent should, when possible, be the sheriff of the county or his deputy.

6. Each application must be accompanied with the legal fee of one dollar.

*To Honorable ———, Governor of Pennsylvania.*

The petition of ———, of ———, in the County of ———, State of Pennsylvania, respectfully represents:

That \_\_\_\_\_ stands charged, as appears by the annexed certified copy of \_\_\_\_\_, with the crime of \_\_\_\_\_, committed in the County of \_\_\_\_\_, and State of Pennsylvania, on or about the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 189 \_\_\_\_\_; the said \_\_\_\_\_ was in the said county and State at the time of the commission of the said offence; that before an arrest could be made, on or about the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 189 \_\_\_\_\_, he fled from the State of Pennsylvania, and is now, as your petitioner verily believes, in the county of \_\_\_\_\_ and State of \_\_\_\_\_, a fugitive from the justice of this State, said belief being founded on the following information, to wit:

\_\_\_\_\_, that the said fugitive is now desired in order that he may be tried for the commission of the said crime; that there is sufficient evidence, that can and will be produced at his trial, to justify his conviction; that any delay (which may have occurred) in the prosecution of said offence was unavoidable, for the following reasons, to wit:

Wherefore your petitioner prays that a requisition may issue, directed to the Governor of the said State of \_\_\_\_\_, for the arrest and delivery of the said fugitive, and that \_\_\_\_\_ of the County of \_\_\_\_\_, and State of Pennsylvania, may be appointed agent on behalf of said State to go after, receive, and return him to the said County of \_\_\_\_\_ for trial.

County of \_\_\_\_\_ ss.

\_\_\_\_\_, being duly sworn (or affirmed), doth depose and say that the statements contained in the foregoing petition are true, that the application for a requisition is made in good faith, not for any private ends, but with a view to prosecute to conviction the charge against the said fugitive, and that the agent named has no private interest in the arrest of the fugitive.



Sworn to (or affirmed) and subscribed before me, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 189 \_\_\_\_\_.

\_\_\_\_\_,  
*Clerk Court of Quarter Sessions.*

I, \_\_\_\_\_, District Attorney in and for the County of \_\_\_\_\_, Pennsylvania, do hereby certify, that I have carefully examined the case in which the foregoing application for



requisition is made, and do approve of said application, and do further certify :

1. That the full name, properly spelled, of the person for whom extradition is asked is \_\_\_\_\_, and the name of the agent proposed is \_\_\_\_\_.

2. That in my opinion the ends of public justice require that said fugitive be brought to this State for trial, at the public expense.

3. That I believe I have sufficient evidence to secure the conviction of said fugitive.

4. That the person named as agent is a proper person, and that he has no private interest in the arrest of said fugitive.

5. That \_\_\_\_\_ former application for a requisition for said fugitive growing out of the same transaction has been made \_\_\_\_\_.

6. That said fugitive is \_\_\_\_\_, now under arrest \_\_\_\_\_.

7. That this application is not made for the purpose of enforcing the collection of a debt, or for any private purpose whatever ; and if the requisition now applied for be granted, the criminal proceedings shall not be used for any such object.

8. The crime with which said fugitive stands charged is \_\_\_\_\_.

9. That any delay which has occurred in the prosecution of said offence and application for requisition was unavoidable, for the reason \_\_\_\_\_.

10. I am satisfied that the expenses attending the extradition of said fugitive shall be charged upon this county, and will take the proper means to obtain them.

\_\_\_\_\_,  
District Attorney.

## FORMS OF WARRANTS.

[No. 1. — *Requisition.*]

### COMMONWEALTH OF PENNSYLVANIA.

#### EXECUTIVE DEPARTMENT.

\_\_\_\_\_, Governor of Pennsylvania, to His Excellency the Governor of the State of \_\_\_\_\_.

WHEREAS, it appears by the annexed \_\_\_\_\_ which authentic and duly authenticated in accordance

with the laws of this State, that \_\_\_\_\_ stand charged  
 with the crime of \_\_\_\_\_, committed in the County of \_\_\_\_\_  
 in this State, and it has been represented to me  
 that \_\_\_\_\_ ha fled from the justice of this State and  
 ha taken refuge in the State of \_\_\_\_\_ ;

Now therefore, pursuant to the provisions of the Constitution  
 and laws of the United States in such case made and provided, I  
 do hereby request that the said \_\_\_\_\_ be apprehended  
 and delivered to \_\_\_\_\_, who is hereby authorized to  
 receive and convey \_\_\_\_\_ to the State of Pennsylvania, there to  
 be dealt with according to law.

In witness whereof, I have hereunto set my hand and caused the  
 Great Seal of the State to be affixed at Harrisburg, this \_\_\_\_\_ day  
 of \_\_\_\_\_, in the year of our Lord one thousand eight hun-  
 dred and \_\_\_\_\_.

By the Governor,

\_\_\_\_\_,  
*Governor of Pennsylvania.*  
 \_\_\_\_\_,  
*Secretary of the Commonwealth.*

[*No. 2.— Agent's Warrant.*]

## COMMONWEALTH OF PENNSYLVANIA.

### EXECUTIVE DEPARTMENT.

\_\_\_\_\_, *Governor of Pennsylvania, to all to whom these  
 presents shall come, sends greeting.*

Know ye, that I have authorized and empowered, and by these  
 presents do authorize and empower \_\_\_\_\_, as agent on  
 the part of this Commonwealth, to receive from the proper author-  
 ities of the State of \_\_\_\_\_, fugitive from justice,  
 and convey \_\_\_\_\_ to this State, to be dealt with according to law.  
 All persons are therefore requested to permit the said agent at  
 \_\_\_\_\_ own proper cost to remove the said \_\_\_\_\_ un-  
 molested into this State, the said agent peacefully and lawfully  
 behaving.

In witness whereof, I have hereunto set my hand and caused the  
 Great Seal of the State to be affixed at Harrisburg, this \_\_\_\_\_ day

of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and \_\_\_\_\_.

\_\_\_\_\_,  
Governor of Pennsylvania.

\_\_\_\_\_,  
Secretary of the Commonwealth.

By the Governor.

[No. 3. — *Rendition Warrant.*]

## COMMONWEALTH OF PENNSYLVANIA.

### EXECUTIVE DEPARTMENT.

\_\_\_\_\_, Governor of Pennsylvania. To  
Sheriff of \_\_\_\_\_ County, or any other officer author-  
ized by law to execute warrants.

WHEREAS, it has been represented to me by his Excellency the Governor of the State of \_\_\_\_\_, that \_\_\_\_\_, and that \_\_\_\_\_ ha fled from justice in that State, and taken refuge in the State of Pennsylvania, and the said Governor having, in pursuance of the Constitution and laws of the United States, demanded of me that I shall cause the said \_\_\_\_\_ to be arrested and delivered to \_\_\_\_\_, who is duly authorized to receive and convey \_\_\_\_\_ back to the State of \_\_\_\_\_ there to be dealt with according to law;

And whereas, the said representation and demand is accompanied by a copy of the \_\_\_\_\_ aforesaid, which is certified as authentic by the said Governor, and is now on file in the office of the Secretary of the Commonwealth;

You are, therefore, authorized and required to execute this warrant in accordance with the act of the General Assembly, entitled "An Act to regulate proceedings under requisitions upon the Governor of this Commonwealth for the apprehension of fugitives from justice," approved the twenty-fourth day of May, Anno Domini one thousand eight hundred and seventy-eight, and after the hearing therein directed, to deliver the said \_\_\_\_\_ into the custody of the said \_\_\_\_\_, to be taken back to the State from which \_\_\_\_\_ fled, pursuant to said requisition.

Given under my hand and the Great Seal of the State, at Harris-  
burg, this            day of            , in the year of our Lord one  
thousand eight hundred and            .

\_\_\_\_\_,  
*Governor of Pennsylvania.*

\_\_\_\_\_,  
*Secretary of the Commonwealth.*

By the Governor.

[NOTE. — The Secretary of State of Pennsylvania informs me that it has for  
some time been intended to prepare and issue new forms and warrants, but  
that delays have supervened.]

## RHODE ISLAND.

SECTION 1. Whenever any person shall be found within this  
State charged with an offence committed in any other State or  
Territory, and be liable by the Constitution and laws of the United  
States to be delivered over upon the demand of any executive of  
any other State or Territory, any court authorized to issue war-  
rants in criminal cases may, upon complaint under oath, setting  
forth the crime or offence, and such other matters as are necessary  
to bring the case within the provisions of law, issue his warrant to  
bring the person so charged before the same or some other court  
within the State, to answer such complaint as in other cases.

SECT. 2. If upon the examination of any person so charged, it  
shall appeared [*sic*] that there is reasonable cause to believe the  
complaint true, and that such person may be lawfully demanded of  
the executive of this State, he shall, if charged with an offence  
bailable by such magistrate, when committed within this State, be  
required to recognize in a reasonable sum with sufficient sureties to  
appear before such court at some future day, allowing a reasonable  
time to obtain a warrant from the said executive, and to abide the  
order of such magistrate on such complaint.

SECT. 3. If such person shall not so recognize, he shall be com-  
mitted to jail, and be there detained until he gives such recogni-  
zance or until such day.

SECT. 4. If he shall recognize and shall fail to appear according  
to the conditions of his recognizance, he shall be defaulted, and

like proceedings shall be had as in case of other recognizances entered into before a magistrate.

SECT. 5. If such person shall be charged with an offence not bailable by such court when committed within this State, he shall be committed to prison and there detained until the day appointed for his appearance before such court, but in such case the said person shall be bailable in the same manner as he would be if such offence had been committed in this State.

SECT. 6. If the person so recognized or committed shall appear before such court upon the day appointed, he shall be discharged, unless he shall be demanded by some person authorized by a warrant of the executive to receive him: *Provided*, that whether such person so charged be recognized, committed, or discharged, any person authorized by a warrant from the executive of this State may at all times take him in custody, and the same shall be a discharge of the recognizance, if any, and shall not be deemed an escape.

SECT. 7. No warrant shall be issued in pursuance of the provisions of section one of this chapter until the complainant shall have given recognizance, with surety, in such sum as the court shall approve and direct, to pay all the costs that may accrue thereon, including the board of the person complained of, if committed to jail, nor shall any such warrant supersede any arrest, either on civil or criminal process theretofore made, nor shall any arrest, either on civil or criminal process theretofore made, supersede any arrest made on any such warrant or on any warrant issued by the executive of this State in such cases.

SECT. 8. Sheriffs, deputy-sheriffs, constables, and other officers of the adjoining States, with their assistants, in the legal execution of any writ, warrant, or other process issuing from and returnable to courts in their respective States, shall have full liberty, power, and authority to pass and repass, and also to convey such persons or things as they may legally have in their custody by virtue of any writ or warrant, in or by any of the roads or ways lying in or leading through any of the towns or lands of this State, in as full, free, and ample manner as the officers of justice in this State do use and exercise in the discharge of their duty and office.

SECT. 9. Every person who shall obstruct any such officer of any of the United States in such execution of his office, while he is passing through any of the lands or roads of this State, shall be

subject to the same pains and penalties as persons would by law be subject to for obstructing similar officers of justice of this State in the due execution of their office.

[Public Statutes of Rhode Island, 1882, title xxxi., chap. 249, pp. 705, 706.]

## REQUISITIONS.

### STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS.

EXECUTIVE DEPARTMENT,  
PROVIDENCE,

189 .

SIR, — The following rules have been established for issuing requisitions upon the executive authority of any other State or Territory, and for issuing warrants upon requisitions from such executive authority, for the apprehension of fugitives from justice :

Every application to the Governor for a requisition upon the executive authority of any other State or Territory, for the delivery up and return of any offender who has fled from the justice of this State, must be in writing, and must be accompanied by the following documents and proofs : —

1. A duly attested copy of the indictment, if an indictment has been found against the offender.

2. If no indictment has been found, then the application must be accompanied by a duly attested copy of the complaint, made before a court or magistrate authorized to receive the same. And if a copy of a complaint is presented, such copy must be accompanied by affidavits to the facts constituting the offence charged.

3. There must in every case be sworn evidence that the person charged is a fugitive from justice, — that is, that he has fled from the State to avoid arrest.

The copy of the indictment or complaint should be attested by the clerk or a justice of the court or by the magistrate.

If no indictment has been found, and a copy of a complaint is presented, the affidavits in support thereof must be sufficient to establish a *prima facie* case, such as would justify a grand jury in finding an indictment.

The affidavits to show that the person charged is a fugitive from

justice should show, as particularly as may be, the time and circumstances of his flight, and in what State or Territory he now is.

If the offence was not of recent occurrence, sufficient reasons must be given why the application has been delayed.

All cases should be first submitted to the Attorney-General or the assistant Attorney-General, and his recommendation as to the issuance of a requisition and the proper agent to be appointed should be secured.

The Governor, in his discretion, will require evidence of the character of the persons making the affidavits.

The purpose in granting requisitions is to aid in the administration of the criminal law. No requisition will be issued in any case to aid in collecting a debt or enforcing a civil remedy against a person who has left the State. In all cases where indictments have not been found, and where the conduct of the prosecution is not in the hands of the law officers of the State, it must be made to appear that the application for a requisition is made in good faith, not for any private ends, but with a view to enforce the charge of crime against the offender. This rule will be applied with especial strictness in all cases of cheating, obtaining money by false pretences, embezzlement, forgery, and the like.

The Governor has no power to require the surrender of fugitives who have taken refuge in the British Provinces, or other foreign dominions.

*Duplicates of all papers furnished to the Governor will be required*, in order that one set may be retained here, and the other attached to the requisition.

The Governor of this State will deliver over to the executive of any other State or Territory, persons charged therein with crime, only when the demand is accompanied by the same documents and proofs which are mentioned above, in paragraphs 1, 2, and 3. He will require satisfactory evidence that the only object of the requisition is to punish the criminal, and that the process is not sought for the purpose of enforcing a civil remedy.

\_\_\_\_\_,  
Governor.

## FORMS.

[No. 1. — *Requisition.*]STATE OF RHODE ISLAND AND PROVIDENCE  
PLANTATIONS.*To his Excellency, Governor of*

THE undersigned, Governor of the State of Rhode Island and Providence Plantations, would inform your Excellency, that  
 , charged with the crime of  
 (as will more fully appear by the copy of a hereunto  
 annexed, which I certify to be authentic), is a fugitive from the  
 justice of this State, and now supposed to be within the limits of  
 the State of

Your Excellency is therefore requested, in conformity with the  
 Constitution and laws of the United States, to cause the said  
 to be delivered to , who is ap-  
 pointed agent to receive him; that he may be brought to this State,  
 and dealt with as to law and justice may appertain.

In testimony whereof, I have caused the Seal of this State to be  
 hereunto affixed this day of , in the year of our  
 Lord one thousand eight hundred and eighty- , and of In-  
 dependence the one hundred and .

By his Excellency, the Governor,

\_\_\_\_\_,  
*Secretary of State.*[No. 2. — *Agent's Warrant.*]IN THE NAME AND BY THE AUTHORITY OF THE  
STATE OF RHODE ISLAND.

*I, \_\_\_\_\_, Governor of the State of Rhode Island, to  
 all who shall see these presents, greeting.*

Know ye, that reposing special trust and confidence in the in-  
 tegrity, diligence, and ability of , I do hereby



appoint him agent on the part of this State, to proceed to the State of \_\_\_\_\_, for the purpose of demanding and receiving from the proper authorities of said State, \_\_\_\_\_, a fugitive from justice, from the State of Rhode Island, charged with the crime of \_\_\_\_\_, and I do hereby authorize and direct said \_\_\_\_\_ to demand and receive the said fugitive, and bring him to this State, and deliver him to the custody of the Sheriff of the County of \_\_\_\_\_. (This State will not hold itself responsible for the expenses attending the execution of this requisition.)

In testimony whereof, I have hereunto set my hand, and caused the Seal of the State to be affixed, at the city of Providence, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and eighty-\_\_\_\_\_, and of the Independence of the United States the one hundred and \_\_\_\_\_.

By the Governor,

\_\_\_\_\_,

*Secretary of State.*

[No. 3. — *Warrant of Rendition.*]

STATE OF RHODE ISLAND AND PROVIDENCE  
PLANTATIONS.

*By his Excellency, \_\_\_\_\_, Governor, Captain-General and Commander-in-Chief of the State of Rhode Island and Providence Plantations, to the Sheriff of our County of \_\_\_\_\_, greeting.*

WHEREAS, information has been communicated to me by his Excellency, \_\_\_\_\_, Governor of the State of \_\_\_\_\_, that \_\_\_\_\_, charged with the crime of \_\_\_\_\_ there committed, \_\_\_\_\_ fugitive from justice, and now supposed to be within the limits of our said State;

And whereas, his Excellency, the said \_\_\_\_\_, Governor as aforesaid, has transmitted to me a copy of a \_\_\_\_\_, certified by him to be authentic, charging the said \_\_\_\_\_ with the crime aforesaid, and has demanded the delivery of the said \_\_\_\_\_, according to the Constitution and laws of the United States;

You are therefore commanded forthwith to apprehend the said \_\_\_\_\_, if to be found within your precinct, and deliver (if he be not already in custody for other lawful cause), unto \_\_\_\_\_, the person delegated to receive and convey to the State of \_\_\_\_\_, that may be there dealt with according to law.

Hereof fail not, but make true return of this warrant unto our Secretary's office, with your doings thereon.

Given under my hand and the Seal of our said State, this day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and \_\_\_\_\_, and of Independence the \_\_\_\_\_.

By his Excellency's command.

[No. 4. — *Authority to Foreign Agent.*]

## STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS.

*By his Excellency, \_\_\_\_\_, Governor of the State of  
Rhode Island and Providence Plantations, to  
greeting.*

WHEREAS, application has been made to me by the Governor of the State of \_\_\_\_\_, for the delivery of \_\_\_\_\_, charged with the crime of \_\_\_\_\_, represented to be a fugitive from justice, and supposed to be now within the limits of this State; and whereas, it appears, from documents exhibited to me, and especially an executive warrant under the seal of the State of \_\_\_\_\_, and dated \_\_\_\_\_, that you, the said \_\_\_\_\_, have been duly appointed by the supreme executive authority of the State of \_\_\_\_\_, to receive from the authority of this State the said fugitive, and him to convey to the said State of \_\_\_\_\_;

I do therefore, hereby, by virtue of the provisions of the Constitution and laws of the United States, and of this State, authorize you, the said \_\_\_\_\_, to receive the said \_\_\_\_\_ into your custody at the line of this State from such officer of this State as may be duly authorized to deliver him to you, and him the said \_\_\_\_\_, you are hereby directed to convey to the State of \_\_\_\_\_, there to be dealt with as to law and justice

may appertain ; all which is to be without charge or expense to this State ; and of your doings in the premises you will make due return to this Department within thirty days of the date hereof.

In witness whereof, I have caused the Seal of the State to be hereunto affixed, this            day            , in the year of our Lord one thousand eight hundred and            , and of the Independence of the United States of America the            .

By his Excellency the Governor,

\_\_\_\_\_,  
*Secretary of State.*

## SOUTH CAROLINA.

SECTION 2620. 1. Any officer in the State authorized by law to issue warrants for the arrest of persons charged with crime, shall, on satisfactory information laid before him under the oath of any credible person, that any fugitive in the State has committed, out of the State, and within any other State, any offence which by the law of the State in which the offence was committed is punishable, either capitally or by imprisonment for one year or upwards in any State prison, shall have full power and authority, and is hereby required, to issue a warrant for said fugitive, and commit him to any jail within the State for the space of twenty days, unless sooner demanded by the public authorities of the State wherein the offence may have been committed, agreeable to the act of Congress in that case made and provided ; if no demand be made within the time, the said fugitive shall be liberated, unless sufficient cause be shown to the contrary ; *Provided*, that nothing herein contained shall be construed to deprive any person so arrested of the right to release on bail as in cases of similar character of offences against the laws of this State.

2. Every officer committing any person under this section shall keep a record of the whole proceedings before him, and immediately transmit a copy thereof to the Governor of this State for such action as he may deem fit therein under the law.

3. The Governor of this State shall immediately inform the

Governor of the State in which the crime is alleged to have been committed of the proceedings had in such case.

4. Every sheriff or jailer, in whose custody any person committed under this section shall be, upon the order of the Governor of this State, shall surrender him to the person named in said order for that purpose.

[General Statutes of South Carolina, 1882, Part IV. title ii. chap. cxii. pp. 735, 736.]

Section 478, Part I. title vi. chap. xv. (p. 162) authorizes the Governor to offer a reward for the apprehension of criminals in South Carolina who are unknown or fugitive from justice.

By act No. 426, Acts and Res. of the Gen. Assembly of South Carolina, 1887, Stats. at Large of South Carolina, Vol. XIX. p. 859, provision is made as to the compensation, at the rate of \$3.00 a day, of agents authorized by the Governor to receive fugitives from the justice of South Carolina. The necessary expenses so incurred are also allowed.

### APPLICATIONS FOR REQUISITIONS.

On this subject the Governor of South Carolina has had the goodness to furnish me with the following statement:—

“There are no rules of practice governing requisitions, enacted by law.

“The requisition is made on a certified copy of indictment found, or on affidavit charging crime, duly authenticated.

“In all cases, affidavit is necessary to show that the accused is a fugitive from justice and has taken refuge in another State; and if the affidavit is on information, the sources of information should be given, — as a telegram, letter, &c.

“When requisitions are wanted for forgery, obtaining goods under false pretences, &c., affidavit should be made that the sole object of the requisition is to bring the accused to justice, and not for the purpose of collecting a debt.”

## FORMS.

[No. 1. — *Requisition.*]

## STATE OF SOUTH CAROLINA.

## EXECUTIVE DEPARTMENT.

*Governor of the State of South Carolina to his Excellency the Governor of the State of* .

WHEREAS, it appears by the annexed , which hereby certified to be authentic, that stand charged with the crime of , committed in the County of , in said State, and it has been represented to me that fled from the justice of this State, and taken refuge in the State of ;

Now, therefore, pursuant to the provisions of the Constitution and laws of the United States in such case made and provided, I do hereby request that the said be apprehended and delivered to , who is hereby authorized to receive and convey to the State of South Carolina, there to be dealt with according to law.

In witness whereof, I have hereunto signed my name and caused to be affixed the Seal of the Executive Department, at the city of Columbia, this day of , in the year of our Lord one thousand eight hundred and , and in the one hundred and year of the Independence of the United States of America. \_\_\_\_\_

By the Governor,

\_\_\_\_\_,  
Private Secretary

[No. 2. — *Certificate of Authentication.*]

## STATE OF SOUTH CAROLINA.

## OFFICE OF SECRETARY OF STATE.

*To all to whom these presents come, greeting.*

Know ye that , whose official signature appears to the instrument of writing hereto annexed, was, at the time of affixing the same thereto, , as appears from the

records of this Department, that his attestation is in due form, and that full faith and credit are due to his official acts.

Witness my hand and the Seal of the State, at Columbia, this  
                                   day                                  , in year of our Lord one thousand eight  
 hundred and ninety-                                  , and in the one hundred and                                  year  
 of American Independence.

\_\_\_\_\_,  
*Secretary of State.*

[No. 8. — *Agent's Warrant.*]

# STATE OF SOUTH CAROLINA.

## EXECUTIVE DEPARTMENT.

\_\_\_\_\_, *Governor of the State of South Carolina, to all  
 to whom these presents shall come, greeting.*

WHEREAS,

And whereas, agreeably to the provisions of the Constitution of the United States, and an act of Congress passed the twelfth day of February, one thousand seven hundred and ninety-three, I have made demand of his Excellency the Governor of \_\_\_\_\_, for the delivery of the said \_\_\_\_\_ as fugitive from justice; and have also, in pursuance of the power vested in me by law, appointed, and by these presents I do appoint and commission \_\_\_\_\_ agent, on the part of this State, for the purpose of bringing the said \_\_\_\_\_ to this State, having jurisdiction of \_\_\_\_\_ crime aforesaid, whenever the Governor of said State \_\_\_\_\_ shall cause \_\_\_\_\_ to be delivered up, agreeably to the requisition aforesaid.

These are, therefore, to request and require all persons to permit the said \_\_\_\_\_ to receive and secure the said \_\_\_\_\_, and bring \_\_\_\_\_ unmolested into this State, having jurisdiction of \_\_\_\_\_ crime.

Given under my hand and the Seal of the executive department, at the Capitol, in Columbia, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and \_\_\_\_\_, and of the Independence of the United States of America the one hundred and \_\_\_\_\_.

\_\_\_\_\_,  
*Governor.*

By the Governor,

\_\_\_\_\_,  
*Private Secretary.*

[No. 4. — *Rendition Warrant.*]

## STATE OF SOUTH CAROLINA.

*To any Sheriff or other officer of the State of South Carolina to whom these presents shall come, greeting.*

WHEREAS, a requisition has this day been received from his Excellency the Governor of \_\_\_\_\_, for the rendition of \_\_\_\_\_, who stand charged with the crime of \_\_\_\_\_, in said State, and who has escaped therefrom and taken refuge in the State of South Carolina;

Now, therefore, I, \_\_\_\_\_, Governor of the State of South Carolina, do hereby command that the said fugitive be arrested and delivered to \_\_\_\_\_, who is authorized to receive and carry him to the State of \_\_\_\_\_ for trial, in accordance with the laws in such case made and provided.

In witness whereof I have hereunto set my hand and caused the Seal of the Executive Department to be affixed.

Done at our city of Columbia this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and \_\_\_\_\_, and in the one hundred and \_\_\_\_\_ year of Independence.

By the Governor,

\_\_\_\_\_,  
Private Secretary.

## SOUTH DAKOTA.

THE statutes, rules, and forms in force in South Dakota are the same, *mutatis mutandis*, as those in force and printed under North Dakota, except, apparently, form of warrant No. 3, — “Warrant of Arrest” — of which no copy is found in the collection of forms of warrants sent me by the Governor of South Dakota.

It may be observed that the statutes, rules, and forms in force in North Dakota and South Dakota are the same, *mutatis mutandis*, as those in force in the late Territory of Dakota.

**TENNESSEE.**

217. The Governor may appoint an agent to demand of the executive authority of any other State in the Union, any fugitive from justice, or any person charged with treason or any other crime committed in this State.

[Code of Tennessee, 1884, title iii., — of the Civil Government of the State, chap. ii. art. 1, — the Governor, p. 60.]

6185. The Governor may appoint an agent to demand of the executive authority of any other State or Territory any fugitive from justice, or other person charged with treason, felony, or other crime, in this State.

6186. Such agent may, if necessary, employ a sufficient guard or escort to bring such criminal to this State, and contract other expenses absolutely required in performing the duties of the agency.

6187. The expenses thus necessarily incurred, and reasonable compensation to such agent, guard, and escort, shall be paid by the Treasurer, upon the warrant of the Governor.

6188. Whenever a demand is made upon the Governor of this State by the executive of any other State or Territory, in any case authorized by the Constitution and laws of the United States, for the delivery of any person charged in such State or Territory with any crime, if such person is not held in custody or under bail to answer for any offence against the laws of the United States or of this State, he shall issue a warrant for the apprehension of such person.

6189. The warrant shall be under the seal of the State, and authorize the agent who makes the demand, either forthwith or at such time as may be herein [*sic*] designated, to take and transport such person to the line of this State at the expense of such agent, and may also require all peace officers to afford needful assistance in the execution thereof.

6190. If any person be found in this State charged with any crime committed in any other State or Territory, and liable by the Constitution and laws of the United States to be delivered over upon the demand of the Governor thereof, any magistrate may,



upon complaint, on oath, setting forth the offence and such other matters as are necessary to bring the case within the provisions of law, issue a warrant to arrest such person.

6191. If, upon examination, it appear that there is reasonable cause to believe the complaint true, and that such person may be lawfully demanded of the Governor, he shall, if not charged with an offence punished capitally by the laws of the State in which it was committed, be required to give bail by bond or undertaking, with sufficient security, in a reasonable sum, to appear before such magistrate at a future day specified (allowing sufficient time to obtain the warrant from the Governor), and abide the order of such magistrate in the premises.

6192. If such person does not give bail, or if he is charged with a capital offence, he shall be committed to prison, and there detained until such day, in like manner as if the offence charged had been committed within this State.

6193. If such person appear before the magistrate upon the day specified, he shall be discharged unless he is demanded under warrant of the Governor, or unless the magistrate see good cause to commit him to some other day, or to require him to give bail for his appearance at such day, to await a warrant from the Governor.

6194. A failure of such person to attend before the magistrate at the time and place mentioned in the bond or undertaking, is a forfeiture thereof, and the same should be endorsed "forfeited" by the magistrate, and returned to the next criminal or circuit court, as the case may be, where such proceedings shall be had as in the case of bonds or undertakings forfeited in that court.

6195. Whether the person so charged be bound to appear, be committed or discharged, any person authorized by the warrant of the Governor may at any time take him into custody, and such apprehension is a discharge of the bond or undertaking, if there be one.

6196. The complainant in any such case is answerable for all costs and charges, and for the support in prison of any person so committed, and the magistrate before issuing his warrant shall require him to give security for the payment of all such costs, or may require them to be paid in advance to the officers entitled.

6197. And no jailer is bound to receive any person committed under a warrant issued by virtue of the provisions of this chapter,

until his jail fees for the time specified in such warrant are paid in advance.

6198. But the officer or person executing such warrant may, when necessary, by paying the jail fees in advance, or otherwise securing them to the satisfaction of the jailer, confine the prisoner arrested by him in the jail of any county through which he may pass; and the jailer, in such case, shall receive and safely keep the prisoner until the person having charge of him is ready to proceed on his route.

[Tennessee Code, 1884, pp. 1164, 1165.]

### APPLICATION FOR REQUISITION.

*To his Excellency, ——— ———, Governor of Tennessee.*

Your petitioner, ———, a resident of  
County, Tennessee, would respectfully represent and show to your  
Excellency that ——— stands charged by the accompanying  
———, with the crime of ———, committed in the  
County of ———, and State aforesaid, on or about the  
day of ———, 18 ——. That the said ——— fled from  
the State of Tennessee, is a fugitive from the justice thereof, and  
is known or believed to be in the State of ———, the grounds  
for such knowledge or belief being ———. Wherefore,  
your petitioner prays that a requisition issue upon the Governor  
of the said State of ——— for the said ———, that he  
may be brought back to this State for trial; and that  
be appointed agent on the part of the State of Tennessee, to go for,  
receive, and return the said fugitive to the State of Tennessee.

I, ———, do solemnly swear that the facts  
set forth in the foregoing petition are true, and that a requisition for the above-named fugitive is not sought for the purpose of collecting debt, to enforce a civil remedy, or to answer any private end whatever, but for the purpose of punishing crime.

Subscribed and sworn to before me, this  
day of ——— 189 —.

NOTE. — Requisitions will not be issued on petitions alone. The petition must, in all cases, be accompanied by a certified copy of an indictment found against

the fugitive, or, in absence of indictment, a certified copy of an affidavit made before a magistrate (the original of said affidavit to remain on file in said magistrate's office), charging the fugitive with a crime. The Secretary of State's fee, \$2.00, for issuing requisition, should accompany the petition.

## FORMS.

### [No 1. — *Requisition.*]

#### STATE OF TENNESSEE.

\_\_\_\_\_, Governor, to his Excellency the Governor of \_\_\_\_\_.

THE undersigned, Governor of the State of Tennessee, would inform your Excellency, that \_\_\_\_\_, of this State, charged with the crime of \_\_\_\_\_, as will more fully appear by a copy of an \_\_\_\_\_, hereunto annexed, which I certify to be authentic, is a fugitive from the justice of this State, and now supposed to be within the limits of \_\_\_\_\_.

Your Excellency is therefore requested, in conformity to the Constitution and laws of the United States, to cause the said \_\_\_\_\_ to be arrested, if to be found, and delivered to \_\_\_\_\_, who is appointed agent to receive said \_\_\_\_\_, that \_\_\_\_\_ may be brought into this State, and dealt with as to law and justice may appertain.

In testimony whereof, I, \_\_\_\_\_, Governor as aforesaid, have hereunto set my hand and caused the Great Seal of the State to be affixed, at the Department in Nashville, on this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 189 \_\_\_\_\_.

By the Governor,

\_\_\_\_\_,  
Secretary of State.

### [No. 2. — *Agent's Warrant.*]

#### STATE OF TENNESSEE.

\_\_\_\_\_, Governor, to all to whom these presents shall come, greeting.

WHEREAS, it has been made to appear that \_\_\_\_\_, of our County of \_\_\_\_\_, stands charged with the crime of \_\_\_\_\_.

And it has been represented that he \_\_\_\_\_ fled from justice of this State, and taken refuge within the State of \_\_\_\_\_.

And whereas, agreeably to the provision of the Constitution of the United States, and an Act of Congress passed the twelfth day of February, one thousand seven hundred and ninety-three, application has been duly made to his Excellency, Governor of \_\_\_\_\_, for the delivery of said \_\_\_\_\_, as fugitive from justice.

Now, therefore, I, \_\_\_\_\_, Governor of the State of Tennessee, in pursuance of the power vested in me by law, have appointed, and by these presents I do appoint and commission \_\_\_\_\_, agent on the part of this State, for the purpose of bringing the said \_\_\_\_\_ into this State, having jurisdiction of the crime aforesaid, whenever the Governor of the said State of \_\_\_\_\_ shall cause \_\_\_\_\_ to be delivered up agreeably to the requisition aforesaid.

These are therefore, to request and require all persons to permit the said \_\_\_\_\_ to receive and secure the said \_\_\_\_\_, and bring \_\_\_\_\_ unmolested into this State, having jurisdiction of said crime—the agent peacefully and lawfully behaving—the State to pay no part of the expense incurred by the execution of this requisition.

In testimony whereof, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Tennessee.

Done at the city of Nashville, this \_\_\_\_\_ in the year of our Lord one thousand eight hundred and \_\_\_\_\_, of the Independence of the United States, the one hundred and \_\_\_\_\_.

By the Governor,

\_\_\_\_\_,

*Secretary of State.*

[No. 3. — *Rendition Warrant.*]

STATE OF TENNESSEE.

\_\_\_\_\_, Governor, to the Sheriffs, Constables, and other civil officers of the State, and to \_\_\_\_\_, Agent of the State of \_\_\_\_\_, greeting.

WHEREAS, it has been made known to me by the executive of the State of \_\_\_\_\_, that a certain \_\_\_\_\_ stands charged

upon \_\_\_\_\_, in the State of \_\_\_\_\_, with having committed the crime of \_\_\_\_\_, in the State of \_\_\_\_\_, and that the said \_\_\_\_\_ has fled from the State of \_\_\_\_\_ and is now running at large in the State of Tennessee; and whereas, the said executive of the State of \_\_\_\_\_ has, in due form of law, demanded the said fugitive from the executive of the State of Tennessee, at the time of making such demand exhibiting to the executive of Tennessee a copy of said \_\_\_\_\_ found against the said \_\_\_\_\_, in the State of \_\_\_\_\_, for said crime of \_\_\_\_\_, which is a crime by the laws of the State of \_\_\_\_\_, and said copy of \_\_\_\_\_ being certified as authentic by the executive of the State of \_\_\_\_\_, and \_\_\_\_\_ being appointed by said executive of the State of \_\_\_\_\_, as agent to receive said fugitive, and deliver him up to be dealt with according to law;

Now, therefore, I, \_\_\_\_\_, Governor as aforesaid, do hereby enjoin, authorize, and empower the said agent, \_\_\_\_\_, to arrest, and do command and enjoin all sheriffs and constables, and other civil officers of the State, to be active and vigilant to apprehend the said \_\_\_\_\_; and, when apprehended, to deliver him to \_\_\_\_\_, agent on the part of \_\_\_\_\_, to receive the fugitive, and the said \_\_\_\_\_ is hereby authorized as the duly appointed agent of the State of \_\_\_\_\_, to take and transport the said fugitive to the line of the State of Tennessee, at his own cost and charges; and all officers of this State are hereby commanded and enjoined to afford him all needful assistance in the execution of this writ, to the full extent of transporting said fugitive to the line of the State of Tennessee.

In testimony whereof, I have hereunto set my hand, and caused the Great Seal of the State to be affixed, at Nashville, on the \_\_\_\_\_ day of \_\_\_\_\_, 189 \_\_\_\_\_.

By the Governor,

\_\_\_\_\_,  
Secretary of State.

**TEXAS.**

**ARTICLE 1022.** A person charged in any other State or Territory of the United States with treason, felony, or other crime, who shall flee from justice and be found in this State, shall, on demand of the executive authority of the State or Territory from which he fled, be delivered up, to be removed to the State or Territory having jurisdiction of the crime.

**ART. 1023.** It is declared to be the duty of all judicial and peace officers of the State to give aid in the arrest and detention of a fugitive from any other State or Territory, that he may be held subject to a requisition by the Governor of the State or Territory from which he may have escaped.

**ART. 1024.** Whenever complaint on oath is made to a magistrate that any person within his jurisdiction is a fugitive from justice from another State or Territory, it is his duty to issue a warrant of arrest for the apprehension of the person accused.

**ART. 1025.** The complaint shall be sufficient if it recite —

1. The name of the person accused.
2. The State or Territory from which he has fled.
3. The offence committed by the accused.
4. That he has fled to this State from the State or Territory where the offence was committed.
5. That the act alleged to have been committed by the accused is a violation of the penal law of the State or Territory from which he fled.

**ART. 1026.** The warrant of a magistrate to arrest a fugitive from justice shall direct a peace officer to apprehend the person accused and bring him before such magistrate.

**ART. 1027.** When the person accused is brought before the magistrate he shall hear proof, and if satisfied that the defendant is charged in another State or Territory with the offence named in the complaint he shall require of him bail, with good and sufficient security, in such amount as such magistrate may deem reasonable, to appear before such magistrate at a specified time; and in default of such bail he may commit the defendant to jail to await a requisition from the Governor of the State or Territory from which he fled.

ART. 1028. A properly certified transcript of an indictment against the accused shall be evidence to show that he is charged with the crime alleged.

ART. 1029. A person arrested under the provisions of this title shall not be committed or held to bail for a longer time than ninety days.

ART. 1030. The magistrate by whose authority a fugitive from justice has been held to bail or committed shall immediately notify the Secretary of State of the fact, stating in such notice the name of such fugitive, the State or Territory from which he is a fugitive, the crime with which he is charged, and the date when he was committed or held to bail. Such notice may be forwarded either through the mail or by telegraph.

ART. 1031. The magistrate shall also immediately notify the district or county attorney of his county of the facts of the case, who shall forthwith give notice of such facts to the executive authority of the State or Territory from which the accused is charged to have fled.

ART. 1032. The Secretary of State upon receiving information, as provided in article 1030, shall forthwith communicate such information by telegraph when practicable, or, if not practicable, by mail, to the executive authority of the proper State or Territory.

ART. 1033. If the accused is not arrested under a warrant from the Governor of this State before the expiration of ninety days from the day of his commitment or the date of his bail-bond, he shall be discharged.

ART. 1034. A person who shall have been once arrested under the provisions of this title, and discharged under the provisions of the preceding article, or by *habeas corpus*, shall not be again arrested upon a charge of the same offence, except by a warrant from the Governor of this State.

ART. 1035. Whenever the Governor of this State may think proper to demand a person who has committed an offence in this State, and has fled to another State or Territory, he may commission any suitable person to take such requisition; and the accused person, if brought back to the State, shall be delivered up to the sheriff of the county in which it is alleged he has committed the offence.

ART. 1036. The person commissioned by the Governor to bear a requisition for a fugitive from justice to another State or Terri-

tory, shall be paid out of the State treasury a reasonable compensation for his services, to be paid upon the certificate of the Governor specifying the services rendered and the amount allowed therefor.

ART. 1037. The Governor may, whenever he deems it proper, offer a reward for the apprehension of any person accused of a felony in this State and who is evading an arrest.

ARTS. 1038 and 1039 provide for the payment of the reward.

[Revised Statutes of Texas, 1879; Code of Criminal Procedure, tit. xiv. chap. i. pp. 121, 122.]

### APPLICATION FOR REQUISITION.

(TO BE MADE IN DUPLICATE.)<sup>1</sup>

\_\_\_\_\_, *Governor of the State of Texas.*

I RESPECTFULLY ask that you issue a requisition to the Governor of \_\_\_\_\_ for the apprehension and rendition of \_\_\_\_\_ who stands charged by<sup>2</sup> \_\_\_\_\_ pending in the \_\_\_\_\_ Court, within and for the County of \_\_\_\_\_, with the crime of \_\_\_\_\_, committed in \_\_\_\_\_ County, but who has, since the commission of said offence, and before an arrest could be made upon process issued by said Court, and with a view of avoiding the same, fled from justice of the State of Texas, and is now, as your petitioner verily believes, in the County of \_\_\_\_\_, and State of \_\_\_\_\_, and the grounds for such belief are as follows: \_\_\_\_\_.

The ends of justice, in my opinion, require that he be brought back to this State for trial. I herewith present a duly certified copy of the original<sup>2</sup> \_\_\_\_\_ now on file in the office of \_\_\_\_\_ in said county.

In my opinion the fact stated in said<sup>2</sup> \_\_\_\_\_ true, and I believe that the prosecution of said \_\_\_\_\_ would result in his conviction of the crime charged. I nominate \_\_\_\_\_ of \_\_\_\_\_ County, as a proper person to be appointed and commissioned by you as the agent of the State of Texas to receive the said fugitive when he shall be apprehended, and bring him to this State, and deliver him into the custody of the sheriff of said county. I also certify that \_\_\_\_\_ has no private interest

<sup>1</sup> When the requisition is made on Ohio, all papers must be made in triplicate.

<sup>2</sup> Here insert "Complaint," or "Information," as the case may be.



in the proposed arrest. The requisition asked for said fugitive is not sought for the purpose of collecting a debt, or enforcing a civil remedy, or to answer any other private end whatever.

Dated at

189 .

THE STATE OF TEXAS, }

County. } I,

, being duly sworn, on my oath say that the facts stated in the foregoing application are true.

Subscribed and sworn to before me, this      day of      ,  
189 .

*To the Governor.*

In my opinion it would be proper for your Excellency to issue the requisition asked.

\_\_\_\_\_,  
*District Attorney.*

NOTE. — To *each* copy of this application must be attached a certified copy of the "Complaint," or "Information," and the "Warrant." To each copy of the "Complaint" must be attached a certificate of the county clerk as to the official character of the magistrate.

## FORMS.

[No. 1. — *Requisition.*]

IN THE NAME AND BY THE AUTHORITY OF  
THE STATE OF TEXAS.

*To the Governor of the State of* .

WHEREAS, it appears by the annexed documents, which are hereby certified to be authentic, that      stand charged with      committed in the State of Texas, and information having been received that the said      ha fled from justice, and ha taken refuge in      ;

Now, therefore, I, \_\_\_\_\_, Governor of the State of Texas, have thought proper, in pursuance of the provisions of the

Constitution and laws of the United States, to demand the surrender of the said \_\_\_\_\_ as fugitive from justice, and that \_\_\_\_\_ delivered to \_\_\_\_\_ who hereby appointed the agent \_\_\_\_\_ on the part of the State of Texas, to receive \_\_\_\_\_.

Given under my hand, and the Great Seal of the State affixed, at the city of Austin, this the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 189 \_\_\_\_\_, and the Independence of the United States of America the \_\_\_\_\_, and of Texas the \_\_\_\_\_ year. \_\_\_\_\_,

*Governor of Texas.*

By the Governor, \_\_\_\_\_,

*Secretary of State.*

[No. 2. — *Certificate of Authentication.*]

STATE OF TEXAS.

EXECUTIVE OFFICE.

I, the undersigned, Governor of Texas, hereby certify, that \_\_\_\_\_, whose name is signed to the instrument of writing hereto annexed, was, at the time of signing the same \_\_\_\_\_; that his official acts are entitled to full faith and credit; that his attestation is in due form of law; and that the seal thereto affixed is the seal of his office.

In testimony whereof, I hereto sign my name and cause the Seal of State to be affixed, at the city of Austin, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 189 \_\_\_\_\_.

*Governor of Texas.*

By the Governor, \_\_\_\_\_,

*Secretary of State.*

[No. 3. — *Agent's Warrant.*]

IN THE NAME AND BY THE AUTHORITY OF  
THE STATE OF TEXAS.

*To all who shall see these presents, greeting.*

Know ye, that, reposing special trust and confidence in the integrity, diligence, and ability of \_\_\_\_\_, I do

hereby appoint            agent    on the part of this State, to proceed to the State of           , for the purpose of demanding and receiving from the proper authorities of the said State.           , fugitive    from justice from the State of Texas, charged with the crime of           , and I do hereby direct the said            to receive said fugitive   , bring            to this State, and deliver to the sheriff of the County of           , inside the jail of said County.

In testimony whereof, I have hereunto signed my name and caused the Great Seal of the State to be affixed, at the city of Austin, this the            day of           , A. D. 189   , and of the Independence of the United States the one hundred and            and of Texas the fifty-            year.

\_\_\_\_\_,  
Governor.

By the Governor,

\_\_\_\_\_,  
Secretary of State.

[No. 4. — *Rendition Warrant.*]

STATE OF TEXAS.

*To all and singular the Sheriffs, Constables, and other civil officers of said State.*

WHEREAS, it has been made known to me, by the Governor of the State of           , that           stand charged by           , before the proper authorities, with the crime of           , committed in said State, and that the said defendant ha           taken refuge in the State of Texas; and whereas, the said Governor, in pursuance of the Constitution and laws of the United States, has demanded of me that I cause the said fugitive to be arrested and delivered to           , who           , as is satisfactorily shown, duly authorized to receive           into custody and convey           back to said State; and whereas, said demand is accompanied by a copy of said           , duly certified as authentic by the Governor of said State;

Now, therefore, I, \_\_\_\_\_, Governor of Texas, by virtue of the authority vested in me by the Constitution and laws of this

State and of the United States, do issue this my warrant, commanding all sheriffs, constables, and other civil officers of this State, to arrest and aid and assist in arresting said fugitive , and to deliver when arrested to the said agent in order that may be taken back to said State, to be dealt with for said crime.

In testimony whereof, I have hereto signed my name and have caused the Seal of State to be hereon impressed, at Austin, Texas, this day of , A. D. 189 .

\_\_\_\_\_,  
Governor of Texas.

By the Governor,

\_\_\_\_\_,  
Secretary of State.

## UTAH.

§ 5273. s. 1. The Governor may offer a reward, not exceeding five hundred (500) dollars, payable out of the Territorial treasury, for the apprehension, —

1. Of any convict who has escaped from the Territorial penitentiary; or,

2. Of any person, who has committed, or is charged with the [sic] indictment with the commission of an offence punishable with death.

§ 5274. s. 2. The Governor of this Territory may, in any case authorized in the Constitution and laws of the United States, appoint agents to demand of the executive authority of any State or other Territory, or from the executive authority of any foreign government, any fugitive from justice, and the compensation of such agents shall be a charge against the Territory.

§ 5275. s. 3. Whenever a demand shall be made upon the Governor of this Territory, by the Governor of any State or other Territory, in any case authorized by the Constitution and laws of the United States, for the delivery over of any person charged in such State or Territory with any crime, the United States district attorney, when required by the Governor, shall forthwith investigate the grounds of demand, and report to the Governor all

material facts which may come to his knowledge, as to the situation and circumstances of the person so demanded, and especially whether he is held in custody or is under recognizance to answer for any offence against the laws of this Territory, or of the United States, or by virtue of any civil process, and also whether such demand is made conformably to law, so that such person ought to be delivered up.

§ 5276. s. 4. If the Governor shall be satisfied that the demand is conformable to law, and ought to be complied with, he shall issue his warrant, under the seal of the Territory, authorizing the agents who make such demand, either forthwith or at such time as shall be designated in the warrant, to take and transport such person to the line of this Territory, at the expense of such agents, and shall also by such warrants require the civil officers within this Territory to afford all needful assistance in the execution thereof.

§ 5277. s. 5. Whenever any person shall be found within this Territory, charged with any offence committed in any State or other Territory, and liable by the Constitution and laws of the United States to be delivered over upon the demand of the Governor of such State or other Territory, any court or magistrate authorized to issue warrants in criminal cases may, upon complaint on oath, setting forth the offence and such other matters as are necessary to bring the case within the provisions of law, issue a warrant to bring the person so charged before the same or some other court or magistrate, within this Territory, to answer such complaint as in other cases.

§ 5278. s. 6. If, upon the examination of the person charged, it shall appear to the court or magistrate that there is reasonable cause to believe that the complaint is true, and that such person may be lawfully demanded of the Governor, he shall, if not charged with a capital crime, be required to recognize, with sufficient sureties, in a reasonable sum, to appear before such court or magistrate at a future day, allowing a reasonable time to obtain the warrant of the Governor, and to abide the order of the court or magistrate in the premises.

§ 5279. s. 7. If such person shall not recognize, or if he shall be charged with a capital crime, he shall be committed to prison, and there detained [until] such day, in like manner as if the offence charged had been committed within this Territory, and if the per-

son so recognizing shall fail to appear according to the condition of this recognizance, he shall be defaulted, and the same proceedings shall be had as in the case of other recognizances entered into before such court or magistrate.

§ 5280. s. 8. If the person so recognized or committed shall appear before the court or magistrate on the day ordered, he shall be discharged, unless he shall be demanded by some person authorized by the warrant of the Governor to receive him, or unless the court or magistrate shall see cause to commit him, or to require him to recognize anew for his appearance at some other day; and if, when ordered, he shall not so recognize, he shall be committed and detained as before; *Provided*, That whether the person so charged shall be recognized, committed, or discharged, any person authorized by the warrant of the Governor may, at all times, take him into custody, and the same shall be a discharge of the recognizance, if any, and shall not be deemed an escape.

§ 5281. s. 9. The complainant in any such case shall be answerable for all the actual costs and charges, and for the support in prison of any person so committed, to be paid weekly, or otherwise, as may be ordered by the court or magistrate; and if the charge for his support in prison shall not be so paid, the jailer may, on the failure of the complainant, discharge such person from his imprisonment.

[Compiled Laws of Utah, 1888, vol. ii. pp. 764-766. Sections 5278 and 5279 of the Revised Statutes of the United States, touching interstate rendition, are reprinted at page 65 of volume i. of the Compiled Laws.]

An Act amending section 5274 of the Compiled Laws of Utah, of 1888, relating to Fugitives from Justice.

SECTION 1. *Be it enacted, etc.*, That section 5274, of the Compiled Laws of Utah of 1888, is hereby amended to read as follows:—

SECT. 5274. The Governor of this Territory may, in any case where any person is charged therein with felony or other crime against the laws of this Territory, who shall flee from justice, or be found in any State, or other Territory, demand from the executive authority of such State, or other Territory, the surrender to the authorities of this Territory of such fugitive from justice, who has been found in such State or other Territory, and the accounts for the necessary expense and lawful fees of the agents appointed by

the Governor to bring back such fugitive, properly verified by the oath of such agents, and certified by the Governor, as being to the best of his knowledge and information correct and true, shall be audited by the auditor of public accounts, and paid out of the Treasury of the Territory.

SECT. 2. This act shall take effect upon its approval.

Approved March 13, 1890.

[Laws of Utah, 1890, p. 95.]

## FORMS.

[No. 1. — *Requisition.*]

### TERRITORY OF UTAH.

#### EXECUTIVE DEPARTMENT.

———, *Governor of the Territory of Utah, to his Excellency the Governor of the* of .

It appearing to me that one stands charged with the crime of , committed in the County of , Territory of Utah (as evidence of which hereunto attached); and which certified to be authentic. And it also appearing that the said has fled the Territory of Utah, and is believed to be within the limits of the of ;

Now, therefore, in the name and by the authority of the people of the Territory of Utah, and in virtue of the rights and privileges secured and guaranteed by the laws and Constitution of the United States, I do hereby demand and require of his Excellency the Governor of the of , that he cause the said to be surrendered and delivered up to the justice of the Territory from which he has fled, if to be found within the jurisdiction of the of .

And I have appointed, and do by these presents constitute and appoint , as the agent of the Territory of Utah, to receive and convey back the said fugitive, to be delivered into the custody of the , without expense to the Territory of Utah.

Witness my hand and the Great Seal of Utah Territory, at Salt Lake City, this                      day of                      189 .

\_\_\_\_\_,  
Governor.

By the Governor,

\_\_\_\_\_,  
Secretary of Utah Territory.

[No. 2.— *Agent's Warrant.*]

# TERRITORY OF UTAH.

## EXECUTIVE DEPARTMENT.

*To all [to] whom these presents shall come, greeting.*

WHEREAS,                      stand charged with the crime of                      in the Territory of Utah, and it has been represented to me, that he ha fled from the justice of this Territory, and taken refuge within the                      ;

And, whereas, agreeably to the Constitution of the United States, and of the Territory of Utah, I have made application to his Excellency the Governor of                      for the delivery of said                      , as fugitive from justice ;

Now, therefore, by the authority vested in me, the Governor of the Territory of Utah, I do by these presents appoint and commission                      agent on the part of the Territory of Utah, for the purpose of bringing the said                      into this Territory, having jurisdiction of the crime aforesaid, whenever the Governor of the said                      shall cause to be delivered up according to the requisition aforesaid.

These are therefore to request and require all persons to permit the said                      to receive and secure the said                      , and bring                      unmolested into this Territory, said agent peaceably and lawfully behaving.

In testimony whereof I have hereunto set my hand and caused to be affixed the Great Seal of the Territory of Utah, at Salt Lake City, this                      day of                      , 189 .

\_\_\_\_\_,  
Governor of Utah.

By the Governor,

\_\_\_\_\_,  
Secretary of Utah Territory.



[No. 3. — *Rendition Warrant.*]

## TERRITORY OF UTAH.

## EXECUTIVE DEPARTMENT.

*The Governor of the Territory of Utah, to  
United States Marshal in and for said Territory, and to  
his deputies, or any of them.*

WHEREAS, his Excellency, the Governor of the \_\_\_\_\_ of  
\_\_\_\_\_, has made requisition upon me for the surrender of  
the body of \_\_\_\_\_, who stands charged with the crime  
of \_\_\_\_\_, committed in said \_\_\_\_\_ of \_\_\_\_\_, and has  
represented to me that the said \_\_\_\_\_ has fled the said  
\_\_\_\_\_ of \_\_\_\_\_, and has taken refuge in the Territory  
of Utah;

Now, therefore, I, \_\_\_\_\_, Governor of the Territory of  
Utah, do call upon you, the said United States Marshal for the  
Territory of Utah, or any of your deputies, to arrest the said  
\_\_\_\_\_, fugitive from justice, if he be found in the Ter-  
ritory of Utah, and deliver him over to \_\_\_\_\_, agent of the  
said \_\_\_\_\_ of \_\_\_\_\_, that he may be returned to the  
of \_\_\_\_\_, from which he fled, there to be dealt with according  
to law; and hereof fail not.

In testimony whereof, I have hereunto set my hand and caused  
the Great Seal of the Territory of Utah to be affixed.

Done at Salt Lake City, on this \_\_\_\_\_ day of \_\_\_\_\_  
A. D. 189 \_\_\_\_\_.

\_\_\_\_\_,  
Governor.

By the Governor,

\_\_\_\_\_,  
*Secretary of Utah Territory.*

## VERMONT.

SECTION 1767. A person who is arrested in this State by virtue of a warrant issued by the Governor of this State upon a requisition of the Governor of any other State, as a fugitive from justice under the laws of the United States, shall not be delivered to the agent of such State until notified of the demand made for his surrender, and given opportunity to apply for a writ of *habeas corpus*, if he claims such right of the officer making the arrest within twenty-four hours after being notified of the demand made for his surrender. (1876, No. 75, § 1.)

SECT. 1768. An officer who delivers such person to such agent for extradition without having complied with the provisions of the preceding section, shall be fined not more than five hundred dollars. (1876, No. 75, § 2.)

SECT. 1769. If a justice has reason to suspect that the crime of murder, or assault with intent to commit murder, or piracy, arson, robbery, forgery, or the utterance of forged paper, has been committed within the county in which such justice has jurisdiction, and that the person who committed said crime is in the territory of Great Britain or the dependencies thereof, such justice shall summon before him any person having knowledge respecting the commission of such crime, who shall thereupon make his deposition in writing before said justice of the facts within his knowledge as to the commission of such crime; and such deposition shall be kept on file in the office of the justice. (1864, No. 4, §§ 1, 2.)

SECT. 1770. If upon the taking of such depositions the justice is of the opinion that the same contain sufficient ground to warrant the apprehension and detention for trial of the person suspected of such crime, he shall issue his warrant for the apprehension of such suspected person in the same form as in complaints made by town grand jurors. (1864, No. 4, § 3.)

SECT. 1771. Proceedings in such cases may also be had in the manner heretofore provided by law. (1864, No. 4, § 4.)

SECT. 1772. Sheriffs shall receive a person charged with crime delivered to them by an officer of another State having a warrant from proper authority for delivering such person, and shall forthwith take such person before a justice for examination. (G. S. 12, § 30; R. S. 11, § 29; R. 1797, p. 144, § 15; R. 1787, p. 32.)

SECT. 1773. The authorities of the State of New York shall have the same power and authority to detain and transport through the territory of this State, persons convicted of offences and sentenced to be confined in a penitentiary in the State of New York, which they have to detain and transport them in said State.

[Revised Laws of Vermont, 1880, chap. xcii. pp. 364–365.]

SECT. 15. That it shall be the duty of every sheriff, deputy sheriff, and constable, within their respective precincts, to receive every inhabitant of this State, charged with the commission of any crime, who may be tendered to him by a sheriff, deputy-sheriff, or other proper officer, belonging to any of the neighboring States, who shall have a warrant, from proper authority, to deliver such inhabitant; and him or her forthwith cause to appear before some justice of the peace, of this State, to be examined in the premises, as the case may require.

[Laws of Vermont, 1776–1807; Act of March 6, 1797, Vol. I. p. 314.]

## REQUISITIONS.

EXECUTIVE DEPARTMENT,  
MONTPELIER,

, 18 .

The following rules will be observed in reference to applications for requisition on Governors of other States and Territories. (Sec. 5278, R. S. of U. S.)

The application must be made by the State's attorney of the county in which the offence was committed, and must be in duplicate original papers, except indictments, which must be certified copies, also in duplicate.

The following must appear from the certificate of the State's attorney: —

1. The *full* name of the person for whom extradition is asked, together with the full name of the agent proposed, the same to be accurately spelled and *plainly* written.

2. That, in his opinion, the ends of public justice require that the alleged criminal be brought to this State for trial.

3. That he believes he has sufficient evidence to secure a conviction of the fugitive, and that he is familiar with the facts, circumstances, and proof relating to the alleged crime.

4. That the person named agent is a proper person, and that he has *no interest* in the arrest of the fugitive.

5. If there has been a former application for a requisition for the same person, growing out of the same transaction, it must be so stated with an explanation of the reasons for a second request, together with the date of such former application, as near as may be.

6. If the fugitive is known to be under either civil or criminal arrest, the fact of such arrest, and the nature of the proceedings upon which it is based, must be stated.

7. That the application is not made for the purpose of enforcing the collection of a debt, or for any private purpose whatever, and that if the requisition applied for be granted, the criminal proceedings shall not be used for any such purpose.

8. That all papers in duplicate have been compared with each other, and are in all respects exact counterparts.

9. Whether the offence charged is a felony or a misdemeanor, with a concise definition thereof, and a particular reference to the statute, giving the section, together with any amendments of the law in question, and stating the punishment for the alleged crime.

10. When more than one year has elapsed since the commission of the crime, a full explanation of the delay must be given. And when no indictment has been found, the reason why must be stated. If the matter has been before, or considered by, the grand jury of the county and a bill not found, this fact must be stated.

a. In cases of false pretences, embezzlement, or forgery, and like offences, the affidavit of the person or party suffering loss by the alleged offence (if any loss occurred), that the application is made in good faith, for the sole purpose of punishing the accused, and that he does not expect or desire to use the prosecution for the purpose of collecting a debt, or for any private purpose, and will not directly or indirectly use the same, or permit the same to be used, for any of said purposes.

b. Proof by affidavit of *facts and circumstances* satisfying the executive that the alleged criminal has fled from the justice of this State, and is in the State on whose executive the demand is requested to be made, must be furnished. No mere unsupported allegations will be received or accepted as conclusive on this point. In addition to the *facts and circumstances* required, it must appear affirmatively what the occupation of the accused at the time of the flight was; whether he was a resident or only in the State transiently;

whether he was married; when the alleged fugitive left the State, and in general the previous history of the accused so far as it can be ascertained; that the *reasons* of the affiant for his belief that the accused is a fugitive from justice may be before the executive for his consideration. As to all affidavits not made by the State's attorney, or some public officer, the State's attorney must certify that the affiant is a respectable person and entitled to credit.

c. If an indictment has been found, certified copies in duplicate must accompany the application.

d. If an indictment has not been found, the *facts and circumstances* showing the commission of the crime charged, *and that the accused perpetrated the same*, must be shown by affidavit or deposition. No application will be considered based on an *information* or *complaint*, and not properly supported by affidavits. Conclusions will not be considered except in connection with the facts and circumstances from which they are drawn.

e. If the crime of forgery is charged, an affidavit of the person whose name is alleged to have been forged must be furnished, or its absence satisfactorily explained.

f. Applications will not be considered unless it affirmatively appears that the alleged fugitive was in this State at the time of the commission of the offence. *Constructive* crime is not within the extradition laws.

g. The official character of the officer taking depositions or affidavits, or administering oaths, or signing or issuing warrants, must be duly certified.

h. The State's attorney asking a requisition must within three months, unless sooner requested, after it is issued make report to the executive of all proceedings made thereunder.

i. Upon the renewal of an application, — for example: on the ground that the fugitive has fled to another State, not having been found in the State upon the executive of which the first was granted, — new papers in conformity with the foregoing regulations must be furnished.

*Blank applications will be furnished State's attorneys upon application.*

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## FORM.

[*Rendition Warrant.*<sup>1</sup>]

## STATE OF VERMONT.

*The Governor of the State of Vermont, to any Sheriff or Constable in this State, greeting.*

WHEREAS, it has been represented to me by the Governor of the State of \_\_\_\_\_ that \_\_\_\_\_ stand charged with the crime of \_\_\_\_\_, committed in the County of \_\_\_\_\_, within the jurisdiction of said State of \_\_\_\_\_, and that he has fled from justice in that State and taken refuge in the State of Vermont, and the said Governor of the State of \_\_\_\_\_, having, in pursuance of the Constitution and laws of the United States, demanded of me that I should cause the said \_\_\_\_\_, so charged with the crime of \_\_\_\_\_, committed within the jurisdiction of the State of \_\_\_\_\_, to be arrested and delivered to \_\_\_\_\_, who is duly authorized to receive \_\_\_\_\_ into his custody and convey \_\_\_\_\_ back to the State of \_\_\_\_\_;

And whereas, the said representation and demand is accompanied by \_\_\_\_\_, which is certified as authentic by the said Governor of the State of \_\_\_\_\_;

You are, therefore, required to arrest and secure the said \_\_\_\_\_ wherever \_\_\_\_\_ may be found within this State, and to deliver \_\_\_\_\_ into the custody of the said \_\_\_\_\_, to be taken back to the said State from whence \_\_\_\_\_ fled, pursuant to said requisition.

In witness whereof, I have hereunto signed my name and affixed the Seal of the State, at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and ninety-\_\_\_\_\_.  
\_\_\_\_\_.

By the Governor,  
\_\_\_\_\_.

*Secretary of Civil and Military Affairs.*

<sup>1</sup> This is the only form of warrant sent me from Vermont.

## VIRGINIA.

## FUGITIVES FROM JUSTICE.

**SECT. 4188.** The Governor shall, whenever required by the executive authority of the United States, pursuant to the Constitution and laws thereof, deliver over to justice any person found within the State, who is charged with having committed any crime without the jurisdiction of the United States.

**SECT. 4189.** The Governor, though not so required, may, in his discretion, deliver over to justice any person found within the State, who is charged with having committed, without the jurisdiction of the United States, any crime, except treason, which by the laws of this State, if committed therein, is punishable with death or confinement in the penitentiary; such delivery shall only be made on the requisition of the duly authorized officers or agents of the government, within the jurisdiction of which the crime is charged to have been committed; and the Governor shall require such evidence of the guilt of the person so charged, as would be necessary to justify his apprehension and commitment for trial had the crime charged been committed within this State. The expense of apprehension and delivery shall be defrayed by those to whom the delivery is made.

**SECT. 4190.** Any person charged in another State of this Union with treason, felony, or other crime, who shall flee from justice and be found within this State, shall, on demand of the executive authority of the State from which he fled, made in the manner prescribed by the Constitution and laws of the United States, be delivered up, according to the said Constitution and laws, to be removed to the State having jurisdiction of the crime.

**SECT. 4191.** Whenever any person shall be found within this State, charged with treason, felony, or other crime, committed in any other State, any justice may, upon complaint on oath, or other satisfactory evidence, that such person committed the offence, issue a warrant to bring the person so charged before the same or some other justice within the State; and the officer to whom such warrant is directed, may execute the same in any county or corporation in the State, and bring the party, when arrested, before any justice of the same or any other county or corporation.

**SECT. 4192.** If it shall appear to the justice before whom the person charged is brought, that there is reasonable cause to believe that the complaint is true, he shall, if he would have beenailable by a justice in case the offence had been committed in this State, be required to enter into a recognizance, with sufficient surety, in a reasonable sum, to appear before the court of the county or corporation of the justice before whom he is brought, at a future day, allowing a reasonable time to obtain the warrant of the executive, and to abide the order of the court; and if such person do not enter into such recognizance he shall be committed to jail, and be there detained until such day. The recognizance, if any, shall be returned to the said court without delay; and if the person entering into the recognizance fail to appear according to the condition thereof, his default shall be entered of record, and the like proceedings be had as in the case of other recognizances entered into before a justice; but if such person would not have beenailable by a justice, in case the offence had been committed in this State, he shall be committed to jail, and there detained until the day so appointed for his appearance before the court.

**SECT. 4193.** The justice by whom such person is so recognized or committed, shall immediately by letter apprise the Governor of the fact, who shall thereupon communicate the same to the executive of the State where the crime is charged to have been committed.

**SECT. 4194.** If the person so recognized or committed shall appear before the court upon the day ordered, he shall be discharged, unless he shall be demanded by some person authorized by the warrant of the Governor to receive him, or unless the court see cause to commit him, or to require him to enter into a new recognizance for his appearance at some other day; and if, when ordered, he do not enter into such recognizance, he shall be committed and detained as before. But whether the person so charged shall be recognized, committed, or discharged, any person authorized by the warrant of the Governor may, at all times, take him into custody, and the same shall be a discharge of the recognizance, if any, and shall not be deemed an escape.

**SECT. 4195.** The complainant in such case shall be answerable for all the actual costs and charges, and for the support, in jail, of any person so committed, to be paid in the same manner as by a creditor for his debtor committed on execution; and if the charge for his support in jail shall not be so paid, the jailer may discharge



him in like manner as if he had been committed for debt on an execution.

**SECT. 4196.** No person under prosecution for any offence alleged to be committed within this State shall be delivered up to the executive authority of another State, or of the United States, until such prosecution shall have been determined, and the person prosecuted shall have been punished, if condemned; nor shall any person, under recognizance to appear as a witness in any such prosecution, be so delivered up, until said prosecution shall be determined. Nor shall any person who was in custody upon any execution, or upon process in any suit, at the time of his arrest for a crime charged to have been committed without the jurisdiction of this State, be so delivered up, without the consent of the plaintiff in such execution or suit, until the amount of such execution shall have been paid, or until such person shall be otherwise discharged from such execution or process.

**SECT. 4197.** The Governor may offer a reward for apprehending and securing any person convicted of an offence or charged therewith, who shall have escaped from prison, or for apprehending and securing any person charged with an offence, who, there is reason to fear, cannot be arrested in the common course of proceeding. But no such reward shall be paid to any sheriff, sergeant, or other officer, who arrests such person by virtue of any process in his hands to be executed. The Governor may also offer a reward for the detection and conviction of the person guilty of an offence, when such offence has been committed, but the person guilty thereof is unknown.

**SECT. 4198.** The Governor shall not grant a pardon in any case before conviction. In any case in which he shall exercise the power conferred on him by the Constitution to commute capital punishment, he may issue his order to the superintendent of the penitentiary, requiring him to receive and confine (and the superintendent shall receive and confine) in the penitentiary, according to such order, the person whose punishment is commuted. To carry into effect any commutation of punishment, the Governor may issue his warrant directed to any proper officer; and the same shall be obeyed and executed.

**SECT. 4199.** The Governor shall not remit, in whole or in part, any fine or amercement assessed or imposed by any court of record, court-martial, or other authority having jurisdiction to assess or impose the same, except as follows :—

SECT. 4200. Whenever judgment shall have been rendered against any person for a contempt of court, other than for non-performance of or disobedience to some order, decree, or judgment, the Governor shall have power to pardon the offence and remit the punishment, whether corporal or pecuniary, either in whole or in part.

SECT. 4201. Any officer, to whom any order or warrant of the Governor is directed, shall make return thereof to the Secretary of the Commonwealth, who shall preserve the same in his office.

[Code of Virginia, 1887 ; tit. lvi. ch. 205.]

### REQUISITIONS.

THE rules adopted by the Interstate Conference, 1887 (see introduction to this Appendix), have been promulgated in Virginia, and are issued with the following circular : —

OFFICE OF THE SECRETARY OF THE COMMONWEALTH,  
RICHMOND, VIRGINIA, October 1, 1887.

The following regulations, adopted by a conference of representatives from twenty-four States, are published for the information and guidance of the officers of this Commonwealth.

The instructions must be strictly observed, the executives of the States represented at said conference being pledged not to issue requisitions except in accordance therewith.

H. W. FLOURNOY,  
*Secretary of the Commonwealth.*

### FORMS.

[No. 1. — *Requisition.*]

#### COMMONWEALTH OF VIRGINIA.

*The Governor of Virginia to the Governor of*

WHEREAS, it appears by \_\_\_\_\_, which  
hereunto annexed, and which I certify to be authentic and duly  
authenticated in accordance with the laws of this State, that  
stand charged with the crime of \_\_\_\_\_,

which I certify to be crime under the laws of this State, committed in the County of \_\_\_\_\_ in this State, and it having been represented to me that he has fled from the justice of this State and may have taken refuge in the \_\_\_\_\_ ;

Now, therefore, pursuant to the provisions of the Constitution and laws of the United States in such case made and provided, I do hereby require that the said \_\_\_\_\_ be apprehended and delivered to \_\_\_\_\_, who hereby authorized to receive and convey \_\_\_\_\_ to the \_\_\_\_\_ of \_\_\_\_\_, there to be dealt with according to law.

In witness whereof, I have hereunto signed my name and affixed the Great Seal of the State, at the Capitol, in the city of Richmond, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and ninety-\_\_\_\_\_.  
\_\_\_\_\_.

By the Governor,

\_\_\_\_\_,

*Secretary of the Commonwealth.*

I, \_\_\_\_\_, do hereby certify that I have this day of \_\_\_\_\_, 189\_\_\_\_\_, honored the requisition of the Governor of \_\_\_\_\_ for the surrender of \_\_\_\_\_, fugitive from the justice of said last named \_\_\_\_\_, and have issued a warrant for delivery to \_\_\_\_\_, the agent of said \_\_\_\_\_ of \_\_\_\_\_, whose authority to receive said fugitive is annexed hereto.

In witness whereof, I have hereunto signed my name and affixed the Seal of the State, at the Capitol, in the city of \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and ninety-\_\_\_\_\_.  
\_\_\_\_\_.

By the Governor,

\_\_\_\_\_.

[No. 2. — *Agent's Warrant.*]

#### COMMONWEALTH OF VIRGINIA.

*The Governor of Virginia to all to whom these presents shall come.*

Know ye, that I have authorized and empowered and by these presents do authorize and empower \_\_\_\_\_ to take and

receive from the proper authorities of the \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_, fugitive from justice, and convey to the \_\_\_\_\_ of \_\_\_\_\_, there to be dealt with according to law.

In witness whereof, I have hereunto signed my name and affixed the Lesser Seal of the State, at the Capitol, in the city of Richmond, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and ninety- \_\_\_\_\_.

By the Governor,

\_\_\_\_\_,

*Secretary of the Commonwealth.*

[No. 3. — *Rendition Warrant.*]

### COMMONWEALTH OF VIRGINIA.

*The Governor of Virginia to \_\_\_\_\_, and the Sheriffs, Under-Sheriffs, and other officers of and in the several cities and counties of this State.*

WHEREAS, it has been represented to me by the Governor of \_\_\_\_\_ that \_\_\_\_\_ stand charged with the crime of \_\_\_\_\_, which he certifies to be crime under the laws of said \_\_\_\_\_, committed in the County of \_\_\_\_\_, in said \_\_\_\_\_, and that \_\_\_\_\_ ha fled from justice in said \_\_\_\_\_, and ha taken refuge in the \_\_\_\_\_, and the said Governor of \_\_\_\_\_ having, in pursuance of the Constitution and laws of the United States, demanded of me that I shall cause the said \_\_\_\_\_ to be arrested and delivered to \_\_\_\_\_, who is duly authorized to receive \_\_\_\_\_ into his custody and convey \_\_\_\_\_ back to the said \_\_\_\_\_ of \_\_\_\_\_;

And whereas, the said representation and demand is accompanied by \_\_\_\_\_, whereby the said \_\_\_\_\_

shown to have been duly charged with the said crime \_\_\_\_\_, and with having fled from said \_\_\_\_\_, and taken refuge in the \_\_\_\_\_, which \_\_\_\_\_ duly certified by the said Governor of \_\_\_\_\_ to be authentic and duly authenticated;

Wherefore, you are required to arrest and secure the said \_\_\_\_\_ wherever \_\_\_\_\_ may be found within the State, and afford \_\_\_\_\_ such opportunity to sue out a writ of *habeas corpus*

as is prescribed by the laws of this State, and to thereafter deliver  
 into the custody of the said \_\_\_\_\_, to be taken  
 back to said \_\_\_\_\_ from which \_\_\_\_\_ fled, pursuant to the  
 said requisition; and also to return this warrant and make return  
 to the Governor of this State, within thirty days from the date  
 hereof, of all your proceedings had thereunder, and of all facts and  
 circumstances relating thereto.

Given under my hand and the Lesser Seal of the State, at the  
 Capitol, in Richmond, this \_\_\_\_\_ day of \_\_\_\_\_, in the year  
 of our Lord one thousand eight hundred and ninety-\_\_\_\_\_.  
 \_\_\_\_\_.

By the Governor,

\_\_\_\_\_,

*Secretary of the Commonwealth.*

## WASHINGTON.<sup>1</sup>

### DEMANDING FUGITIVES FROM JUSTICE.

SECTION 971. The Governor of this Territory may, in any case authorized by the Constitution and laws of the United States, appoint agents to demand of the executive authority of any State or Territory, any fugitive from justice, or any other person charged with felony or any other crime in this Territory, and whenever an application shall be made to the Governor for that purpose, the prosecuting attorney or any other prosecuting officer of the Territory, when required by the Governor, shall forthwith investigate the ground of such application and report to the Governor all material circumstances which may come to his knowledge, with

<sup>1</sup> Under date of July 17, 1890, the Governor of the State of Washington writes me as follows: "There has been no change in the laws or in the rules and regulations in this State in regard to the extradition of fugitives from justice. The Constitution of the State continued in force all Territorial laws until the same should be changed by the State legislature. The rules and regulations adopted by my predecessors have not been changed by me." The forms of warrants have been left as originally printed, leaving it to the reader to substitute "State of Washington" for "Washington Territory."

an abstract of the evidence and his opinion as to the expediency of the demand; but the Governor may, in any case, appoint such agents without requiring the opinion of, or any report from the prosecuting attorney, and the accounts of the agents appointed for such purpose shall in all cases be audited by the Territorial auditor and paid from the Territorial treasury.

SECT. 972. When a demand shall be made upon the Governor of this Territory by the executive of any State or Territory, in any case authorized by the Constitution and laws of the United States, for the delivery over of any person charged in such State or Territory with treason, felony, or any other crime, the prosecuting attorney or any other prosecuting officer, when required by the Governor, shall forthwith investigate the ground of such demand, and report to the Governor all material facts which may come to his knowledge as to the situation and circumstances of the person so demanded, especially as to whether he is held in custody or is under recognizance to answer for any offence against the laws of this Territory or of the United States, or by force of any civil process, and also whether such demand is made according to law, so that such person ought to be delivered up; and if the Governor be satisfied that such demand is conformable to law and ought to be complied with, he shall issue his warrant under the seal of the Territory, authorizing the agents who make such demand, either forthwith or at such time as shall be designated by the warrant, to take and transport such person to the line of the Territory at the expense of such agents, and shall also by such warrant require the civil officers within this Territory to afford all needful assistance in the execution thereof.

SECT. 971 [*sic*]. Whenever any person shall be found within this Territory charged with an offence committed in any State or Territory, and liable by the Constitution and laws of the United States to be delivered on the demand of the executive of such State or Territory, any court or magistrate authorized to issue warrants in criminal cases, may, upon complaint under oath, setting forth the offence, and such other matters as are necessary to bring the offence within the provisions of law, issue a warrant to bring the person so charged before the same or some other court or magistrate, so authorized within the Territory, to answer such complaint as in other cases.

SECT. 974. If, upon the examination of the person charged, it

shall appear to the court or magistrate, by proof in addition to the oath of the complainant, that there is reasonable cause to believe that the complaint is true, and that such person may be lawfully demanded of the Governor, he shall, if not charged with a capital crime, be required to recognize with sufficient sureties, in a reasonable sum, to appear before such court or magistrate at a future day, allowing a reasonable time to obtain a warrant of the executive, and to abide the order of the court or magistrate, and if such person shall not so recognize, he shall be committed to prison and there be detained until such day, in like manner as if the offence charged had been committed in this Territory; and if the person so recognizing shall fail to appear according to the conditions of his recognizance, he shall be defaulted, and the like proceedings shall be had as in the case of other recognizances entered into before such court or magistrate; but if such person be charged with a capital crime, he shall be committed to prison, and there be detained until the day so appointed for his appearance before the court or magistrate.

SECT. 975. If the person so recognized or committed shall appear before the court or magistrate upon the day ordered, he shall be discharged, unless he be demanded by some person authorized by the warrant of the executive to receive him, or unless the court or magistrate shall see cause to commit him, or require of him to recognize anew for his appearance at some other day; and if, when ordered, he shall not so recognize, he shall be committed and be detained as before provided. Whenever the person so appearing shall be recognized, committed, or discharged, any person authorized by the warrant of the executive may at all times take him into custody, and the same shall be a discharge of the recognizance, if any, and shall not be deemed an escape.

SECT. 976. The complainant in such cases shall be answerable for the actual costs and charges, and for the support in prison of any person so committed, and shall advance to the jailer one week's board at the time of commitment, and so from week to week, so long as such person shall remain in jail; and if he fails to do so, the jailer may forthwith discharge the person from his custody.

[Code of Washington Territory, 1881, pp. 187-189.]

## REQUISITIONS.

80. Application for a requisition should be addressed to the Governor, and should contain a statement of the facts in the case, and of the reasons why a requisition should be issued; that the person charged is a fugitive from justice; that he has fled from the Territory to avoid arrest, — stating in what State or Territory he is supposed to have taken refuge; and that the ends of justice require that he be brought back to this Territory for trial. Accompanying this must be a certified copy of the section of the statute defining the offence charged.

81. If the offence is not of recent occurrence, sufficient reasons must be given why the application was delayed.

82. The application should be accompanied by a duly certified copy of the indictment. If no indictment has been found, then a certified copy of a sufficient complaint, made and pending before a magistrate of competent jurisdiction in the county where the offence was committed. The facts should be stated in the complaint with the same particularity as in an indictment.

83. The purpose of granting requisitions being to aid in the administration of the criminal law, they will not be issued to aid in collecting a debt, or to enforce a civil remedy, nor shall the criminal proceedings, when an offender has been arrested, be used for any such purposes.

84. If the alleged fugitive from justice is known to be under arrest, the fact of such arrest and the nature of the proceedings must be stated.

85. If an oath is administered by an officer not having a seal, his official character must be certified by an officer having a seal.

86. The following forms are recommended: —

*To the Governor of Washington Territory.*

You are respectfully requested to issue a requisition on the Governor of \_\_\_\_\_ for the apprehension and rendition of \_\_\_\_\_, who stands charged by [state whether a complaint or an indictment] pending in the [state the name of the court], with the crime of \_\_\_\_\_, committed in \_\_\_\_\_ county, Washington Territory, but who has, since the commission of said offence, and before an arrest could be made upon process issued by said court, fled from



the justice of Washington Territory and into the \_\_\_\_\_, where I believe he may now be found. In my opinion the ends of justice require that he be brought back to this Territory for trial, and the facts are such that his prosecution would, in all probability, result in his conviction. The requisition asked for said fugitive is not sought for the purpose of collecting a debt, or enforcing a civil remedy, or to answer any private end whatever, nor shall the criminal proceedings, when such is arrested, be used for any of said purposes.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day \_\_\_\_\_, 189 .

TERRITORY OF WASHINGTON, }  
COUNTY OF \_\_\_\_\_, }

I, \_\_\_\_\_, being first duly sworn, say that the facts set out in the foregoing application are true as I verily believe.

Subscribed and sworn to before me, this \_\_\_\_\_ day of \_\_\_\_\_, 189 . [SEAL.] \_\_\_\_\_.

*To the Governor.*

Having carefully examined the foregoing application and accompanying papers, I hereby approve the same, and in my opinion it would be proper for you to issue the requisition asked for.

\_\_\_\_\_,  
*Prosecuting Attorney.*

87. Two complete sets, duly certified, of all the papers necessary upon the application, must be furnished, one to be attached to the requisition and one to be retained in this office.

88. Requisitions will not be granted upon the Governors of more than one State or Territory at the same time.

89. The act of Congress contemplates an affidavit made in the county where the crime is alleged to have been committed, and before a magistrate having authority to hear the charge. If the application is based upon an affidavit made before a committing magistrate, it should appear from a certificate of the clerk of a court of record that he is an acting magistrate, duly elected and qualified, that his signature is genuine, and that his certificate is in due form of law.

90. As notaries public are not magistrates within the meaning of the laws of the United States, no requisition will be issued upon an affidavit made before such an officer.

91. The Governor will exercise the right, for cause appearing, to revoke a requisition at any time, without notice.

92. If a requisition is not presented to the authority upon whom made within three months from its date it becomes void.

93. As by law the bearers of requisitions are representatives of the Governor, and are paid out of the Territorial treasury, the right to select them, in all cases, is reserved.

94. The agent shall, within a reasonable time, return his commission to this office with a written account of his proceedings thereon. Application for requisitions must be approved by the proper prosecuting attorney, in every case, and all correspondence on the subject will be with such prosecuting attorney.

[Executive Rules.]

## FORMS.

[No. 1. — *Requisition.*]

### TERRITORY OF WASHINGTON.

#### EXECUTIVE OFFICE.

\_\_\_\_\_, Governor of Washington Territory, to his Excellency the Governor of the \_\_\_\_\_ of \_\_\_\_\_.

It appearing to me that one \_\_\_\_\_ stands charged with the crime of \_\_\_\_\_, committed in the County of \_\_\_\_\_, Washington Territory, which said crime is contrary to the statutes of this Territory in such cases made and provided, and that the said \_\_\_\_\_ has fled from this Territory and the justice thereof and is believed to be within the \_\_\_\_\_ of \_\_\_\_\_, as evidence of which crime, flight, and refuge in your jurisdiction, and of the statutes of this Territory, I have hereunto attached the following certified copies of certain papers which I hereby certify to be authentic: \_\_\_\_\_;

Now, therefore, in the name and by the authority of the Territory of Washington, and by virtue of the rights and privileges

afforded by the laws and the Constitution of the United States, I do hereby demand and require of his Excellency the Governor of the \_\_\_\_\_ of \_\_\_\_\_ the surrender of the said \_\_\_\_\_, a fugitive from the justice of the Territory of Washington, that, if he be found within the limits of your said \_\_\_\_\_ of \_\_\_\_\_, you cause him to be arrested and secured and deliver him unto \_\_\_\_\_, the agent of this Territory, authorized to receive him and to convey him back to the Territory of Washington, there to be dealt with according to law.

In testimony whereof, I have hereunto set my hand and caused the Great Seal of the Territory of Washington to be affixed at the Capital this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord, one thousand eight hundred and ninety-\_\_\_\_\_, and the Independence of the United States, the one hundred and \_\_\_\_\_.

\_\_\_\_\_,  
Governor.

By the Governor,

\_\_\_\_\_,  
*Secretary of Washington Territory.*

[No. 2. — *Agent's Warrant.*]

## TERRITORY OF WASHINGTON.

### EXECUTIVE OFFICE.

\_\_\_\_\_, *Governor of Washington Territory, to all to whom these presents shall come, greeting.*

WHEREAS, I have this day issued upon his Excellency the Governor of the \_\_\_\_\_ of \_\_\_\_\_ a requisition for the arrest of one \_\_\_\_\_, who has fled from the justice of this Territory on account of his having committed herein the crime of \_\_\_\_\_;

Now, therefore, I do hereby appoint and constitute \_\_\_\_\_ of \_\_\_\_\_ county, Washington Territory, as agent of this Territory to demand and receive of the said Governor of the \_\_\_\_\_ of \_\_\_\_\_, or of his agents and officers, the said fugitive from justice \_\_\_\_\_, to bring him back to this jurisdiction that he may be dealt with according to law.

In testimony whereof, I have hereunto set my hand and caused the Great Seal of the Territory of Washington to be affixed at the

Capitol this            day of            , in the year of our Lord one thousand eight hundred and ninety-            , and the Independence of the United States the one hundred and            .

\_\_\_\_\_,  
Governor.

By the Governor,

\_\_\_\_\_,  
*Secretary of Washington Territory.*

[No. 3. — *Rendition Warrant.*]

### TERRITORY OF WASHINGTON.

#### EXECUTIVE DEPARTMENT.

*To all to whom these presents shall come, greeting.*

WHEREAS, demand has been made upon me by his Excellency            , Governor of the            , for the delivery of one            , a fugitive from justice from the said            , being charged with the crime of            , committed in the County of            , in said            , as appears by a            filed in this office ;

Now, therefore, I, \_\_\_\_\_, Governor of the Territory of Washington, by virtue of the authority in me vested, do hereby authorize and empower            , agent named in said demand, to take the said            , wherever he may be found in this Territory, and transfer him to the line thereof at the expense of            ;

And I hereby command all civil officers within the said Territory of Washington to afford all needful assistance, for the execution of the warrant.

In testimony whereof I hereninto set my hand and cause the Great Seal of the said Territory to be affixed this            day of            , A. D. 189            , and of the Independence of the United States, the            .

\_\_\_\_\_,  
Governor.

By the Governor,

\_\_\_\_\_,  
*Secretary of the Territory.*

## WEST VIRGINIA.

## FUGITIVES FROM JUSTICE.

12. The Governor, in any case authorized by the Constitution of the United States, may, on demand, deliver over to the executive of any other State or Territory any person charged therein with treason, felony, or other crime committed therein, and he may on application appoint an agent to demand of the executive authority of any other State or Territory any offender fleeing from the justice of this State; *Provided*, That such demand or application is accompanied by sworn evidence that the party charged is a fugitive from justice, and that the demand or application is made in good faith for the punishment of crime, and not for the purpose of collecting a debt or pecuniary mulct, or of removing the alleged fugitive to a foreign jurisdiction with a view there to serve him with civil process; and also by a duly attested copy of an indictment, or a duly attested copy of a complaint made before a court or magistrate authorized to take the same, such complaint to be accompanied by affidavits to the facts constituting the offence charged, by persons having actual knowledge thereof, and such further evidence in support thereof as the Governor may require. The Governor may pay out of the civil contingent fund any reasonable expenses incurred under this section.

13. Whenever any person shall be found within this State, charged with treason, felony, or other crime committed in any other State, any justice may, upon complaint on oath, or other satisfactory evidence that such person committed the offence, issue a warrant to bring the person so charged before the same or some other justice within the State; and the officer to whom such warrant may be directed may execute the same in any county in the State, and bring the party, when arrested, before any justice of the same or any other county.

14. If it shall appear to the justice before whom the person charged may be brought, that there is reasonable cause to believe that the complaint is true, he shall, if he would have been bailable by a justice, in case the offence had been committed in this State, be required to recognize, with sufficient sureties, in a reasonable

sum, to appear before the circuit court of the county at a future day, allowing a reasonable time to obtain the warrant of the executive, and to abide the order of the court; and if such person shall not so recognize he shall be committed to prison, and be there detained until such day. The recognizance, if any, shall be returned to the said court without delay; and if the person so recognizing shall fail to appear, according to the condition of his recognizance, he shall be defaulted, and the like proceeding shall be had, as in the case of other recognizances entered into before a justice; but if such person would not have been bailable by a justice in case the offence had been committed in this State, he shall be committed to prison, and there detained until the day so appointed for his appearance before the court.

15. The justice by whom such person may be so recognized or committed, shall immediately by letter apprise the Governor of the fact, who shall thereupon communicate the same to the executive of the State where the crime is charged to have been committed.

16. If the person so recognized or committed shall appear before the court upon the day ordered, he shall be discharged, unless he shall be demanded by some person authorized by the warrant of the Governor to receive him, or unless the court shall see cause to commit him, or to require him to recognize anew for his appearance at some other day; and if when ordered, he shall not so recognize, he shall be committed and detained as before. But whether the person so charged shall be recognized, committed, or discharged, any person authorized by the warrant of the Governor may at all times take him into custody, and the same shall be a discharge of the recognizance, if any, and shall not be deemed an escape.

17. The complainant in each case shall be answerable for all the actual costs and charges, and for the support in prison of any person so committed; and if the charge for his support in prison shall not be paid when demanded, the jailer may discharge such person from prison.

#### WHEN FUGITIVES ARE TO BE DETAINED HERE.

18. No person under prosecution for any offence alleged to be committed within this State shall be delivered up to the executive authority of another State, or of the United States, until such

prosecution shall have been determined and the person prosecuted shall have been punished, if condemned; nor shall any person under recognizance to appear as a witness in any such prosecution be so delivered up until said prosecution shall be determined. Nor shall any person who was in custody upon any execution, or upon process in any suit, at the time of being apprehended for a crime charged to have been committed without the jurisdiction of this State, be so delivered up without the consent of the plaintiff in such execution or suit, until the amount of such execution shall have been paid, or until such person shall be otherwise discharged from such execution or process.

[Amended Code of West Virginia, 1884, chap. xiv. pp. 90-92.]

### APPLICATION FOR REQUISITION.

OFFICE OF THE  
PROSECUTING ATTORNEY OF \_\_\_\_\_ COUNTY, W. VA.  
\_\_\_\_\_, 189 .

*To the Honorable \_\_\_\_\_, Governor of the State of West Virginia.*

THE undersigned, prosecuting attorney within and for the County of \_\_\_\_\_ in said State, hereby asks your Excellency to issue a requisition upon the Governor of the State of \_\_\_\_\_ for the arrest and rendition of one \_\_\_\_\_, late a resident of said County, and charged therein with the crime of \_\_\_\_\_, he having, before an arrest could be made, and with a view of avoiding the same, fled from this State to the said State of \_\_\_\_\_, where I believe he now may be found; the ends of justice, in my opinion, requiring that he be brought back to this State for trial, I herewith present \_\_\_\_\_. And I further certify that if the facts stated in said \_\_\_\_\_ are true, the prosecution of said \_\_\_\_\_ would result in the conviction of said fugitive; and furthermore, that I approve of the application for a requisition in this case; that no previous application for a requisition for said accused, for any offence arising out of the same transaction, has been made; that the same is now made for the purpose of justice alone, and not to enable any person to collect a private debt, nor to travel at the public expense, nor for

the purpose of subserving any private end or personal interest whatsoever.

I designate \_\_\_\_\_ of this County, as a proper person to act as agent of the State, and further certify that he has no personal interest in the arrest and return of said fugitive.

Respectfully submitted,

\_\_\_\_\_,  
*Prosecuting Attorney,*  
 \_\_\_\_\_ *County, W. Va.*

STATE OF WEST VIRGINIA, }  
 \_\_\_\_\_ COUNTY, } ss.

I, \_\_\_\_\_, having been duly sworn, depose and say that I am the prosecuting attorney of said county; that the person charged by \_\_\_\_\_ (a duly authenticated copy of which is attached hereto) with the crime of \_\_\_\_\_ fugitive from justice; and that the foregoing application to the Governor of West Virginia for a requisition for \_\_\_\_\_ extradition is made in good faith for the punishment of crime, and not for the purpose of collecting a debt or pecuniary mulct, or of removing \_\_\_\_\_ to a foreign jurisdiction with a view there to serve \_\_\_\_\_ with civil process.

Acts of 1882, Chapter cxliv. Section 12.

Sworn to and subscribed before me in the county aforesaid, this  
 day of \_\_\_\_\_, 189 .

\_\_\_\_\_,  
 \_\_\_\_\_,  
 \_\_\_\_\_ *County of West Virginia.*

## STATE OF WEST VIRGINIA.

### OFFICE OF THE SECRETARY OF STATE.

I, \_\_\_\_\_, Secretary of State of the State of West Virginia, do hereby certify that \_\_\_\_\_, whose signature is affixed to the certificate of authentication hereto attached, and also to the foregoing jurat, was at the date thereof \_\_\_\_\_ in and for the County of \_\_\_\_\_, and State aforesaid, duly \_\_\_\_\_, commissioned, and qualified, and that his official acts are entitled to full faith and credit.



In testimony whereof, I have hereunto subscribed my name and affixed the Great Seal of the State of West Virginia, at the city of \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 189\_\_\_\_, and of the State the \_\_\_\_\_.

\_\_\_\_\_,  
*Secretary of State.*

## FORMS.

[No. 1. — *Requisition.*]

### STATE OF WEST VIRGINIA.

#### EXECUTIVE DEPARTMENT.

*To his Excellency, the Governor of \_\_\_\_\_.*

WHEREAS, it appears by \_\_\_\_\_, duly authenticated in accordance with the laws of this State, that \_\_\_\_\_ stand charged with the crime of \_\_\_\_\_, committed in the County of \_\_\_\_\_, in this State, and it has been represented to me that he ha fled from justice, and ha taken refuge in the State of \_\_\_\_\_;

Now therefore, pursuant to the provisions of the Constitution and laws of the United States, in such case made and provided, I, \_\_\_\_\_, Governor of the State of West Virginia, do hereby request that the said \_\_\_\_\_ be apprehended and delivered to \_\_\_\_\_, who is hereby authorized to receive and convey \_\_\_\_\_ to the State of West Virginia, there to be dealt with according to law.

In witness whereof, I have hereunto affixed my name and the Great Seal of the State of West Virginia, at the city of \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord 189\_\_\_\_, and of the State the \_\_\_\_\_.

By the Governor,

\_\_\_\_\_,  
*Secretary of State.*

[No. 2. — *Agent's Warrant.*]

## STATE OF WEST VIRGINIA.

## EXECUTIVE DEPARTMENT.

To \_\_\_\_\_, of the County of \_\_\_\_\_, greeting.

WHEREAS, \_\_\_\_\_ been charged with the crime of \_\_\_\_\_, committed within the County of \_\_\_\_\_, in this State, and \_\_\_\_\_ by a requisition of this State, been demanded of the Governor of the State of \_\_\_\_\_, as a fugitive from justice ;

In consequence whereof, I, \_\_\_\_\_, Governor of the State of West Virginia, do hereby appoint and authorize you as my agent on the part of the State to receive the said \_\_\_\_\_ from the executive authority of the State of \_\_\_\_\_, and convey to the said County of \_\_\_\_\_, there to be dealt with according to law.

Given under my hand and the Great Seal of the State of West Virginia, at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord 189 \_\_\_\_\_, and of the State the \_\_\_\_\_.

By the Governor,

\_\_\_\_\_,  
Secretary of State.

[No. 3. — *Rendition Warrant.*]

## STATE OF WEST VIRGINIA.

To the Sheriff of any County in this State, greeting.

WHEREAS, his Excellency, \_\_\_\_\_, the Governor of \_\_\_\_\_, has by a requisition demanded of our Governor the body of \_\_\_\_\_, and has represented that he \_\_\_\_\_ fugitive from justice in said State, and that he has taken refuge within the State of West Virginia ;

And whereas, it appears from \_\_\_\_\_ accompanying said requisition, therein certified to be duly authenticated according to the laws of said State, that the said \_\_\_\_\_ stand charged

with the crime of \_\_\_\_\_, committed in the County of \_\_\_\_\_,  
in said State of \_\_\_\_\_; therefore

You are hereby commanded, in the name of the State of West Virginia, to apprehend the said \_\_\_\_\_ and \_\_\_\_\_ deliver to \_\_\_\_\_, the agent appointed by the Governor of said State of \_\_\_\_\_, to be by him conveyed to said State, there to be dealt with according to law.

Witness, \_\_\_\_\_,

our Governor, and the Great Seal of  
the State of West Virginia, at \_\_\_\_\_,  
this \_\_\_\_\_ day of \_\_\_\_\_, in the  
year of our Lord 189\_\_\_\_, and of the  
State the \_\_\_\_\_.

By the Governor.

\_\_\_\_\_,  
*Secretary of State.*

## WISCONSIN.

SECTION 4843. The Governor of this State may, in any case authorized by the Constitution and laws of the United States, demand of the executive authority of any other State or Territory, any fugitive from justice, or any person charged with felony or any other crime in this State, and appoint agents to receive the same; and whenever an application shall be made to the Governor for that purpose, the district attorney or any other prosecuting officer of the State, when required by the Governor, shall forthwith investigate the grounds of such application, and report to the Governor all material circumstances which may come to his knowledge, with an abstract of the evidence, and his opinion as to the expediency of the demand; but the Governor may in any case appoint such agents without requiring the opinion of or any report from the district attorney; and the accounts of the agents appointed for such purpose shall in all cases be audited by the county board of supervisors of the county from which such fugitive may have fled, and paid from the treasury of such county.

SECT. 4844. The district attorney or other prosecuting officer of the State, shall certify that he approves of the application; that

the party whose arrest is sought, is a fugitive from justice; that he believes the said fugitive to have taken refuge in the State or Territory of (naming the same), and that the ends of justice require that the said fugitive should be brought back to this State for trial.

SECT. 4845. Nothing in the preceding section shall be construed as prohibiting the issue of requisitions by the Governor in cases where the district attorney, or other officer of this State, shall refuse to make the application, or when by reason of sickness, or a vacancy in the office, the application cannot be made by a district attorney or other officer; or in other cases where by proper affidavits ample proofs of the propriety and necessity of a requisition shall be furnished to the Governor, but which for good reasons cannot be placed in the form prescribed in the preceding section.

SECT. 4846. Duplicate originals or certified copies of all papers necessary upon application for a requisition, including the application and all other papers in the case, must be furnished to the Governor; and when a requisition is asked for from more than one State, an additional copy thereof must be furnished for each State, and one set of such papers shall be filed and kept in the executive office; and in all cases, except upon indictment, duplicate originals or certified copies of the affidavits and of the papers made before the magistrate for the arrest and examination of the accused, must be furnished, with the certificate of such magistrate, that the person making any such affidavit is to be believed, and with the certificate of the clerk of the circuit court of the county, that such magistrate is a lawful magistrate of such county (and name the town).

SECT. 4847. When a demand shall be made upon the Governor of this State by the executive of any other State or Territory, in any case authorized by the Constitution and laws of the United States, for the delivery over of any person charged in such State or Territory with treason, felony, or any other crime, the district attorney, or any other prosecuting officer of the State, when required by the Governor, shall forthwith investigate the ground of such demand, and report to the Governor all material facts which may come to his knowledge as to the situation and circumstances of the person so demanded, especially whether he is held in custody, or is under recognizance to answer for any offence against the laws of this State or of the United States, or by force of any civil pro-

cess, and also whether such demand is made according to law, so that such person ought to be delivered up; if the Governor is satisfied that such demand is conformable to law and ought to be complied with, he shall issue his warrant under the seal of the State, authorizing any duly appointed agent of the executive who makes such demand forthwith, or at such time as shall be designated by the warrant, to take and transport such person to the line of the State at the expense of such agents, and shall also require the civil officers within this State to afford all needful assistance in the execution thereof.

SECT. 4848. Whenever any person shall be found within this State charged with any offence committed in any other State or Territory, and liable by the Constitution and laws of the United States to be delivered over upon the demand of the executive of such other State or Territory, any court or magistrate authorized to issue warrants in criminal cases, may, upon complaint under oath setting forth the offence, and such other matters as are necessary to bring the case within the provisions of law, issue a warrant to bring the person so charged before the same, or some other court or magistrate within the State, to answer to such complaint as in other cases.

SECT. 4849. If, upon examination of the person charged, it shall appear to the court or magistrate that there is reasonable cause to believe that the complaint is true, and that such person may be lawfully demanded of the Governor, he shall, if not charged with a capital crime, be required to recognize with sufficient sureties in a reasonable sum, to appear before such court or magistrate at a future day, allowing a reasonable time to obtain the warrant of the executive, and to abide the order of the court or magistrate; and if such person shall not so recognize, he shall be committed to prison, and be there detained until such day, in like manner as if the offence charged had been committed within this State; and if the person so recognizing shall fail to appear according to the condition of his recognizance, he shall be defaulted, and the like proceedings shall be had as in the case of other recognizances entered into before such court or magistrate; but if such person be charged with a capital crime, he shall be committed to prison and there detained until the day so appointed for his appearance before the court or magistrate.

SECT. 4850. If the person so recognized or committed shall

appear before the court or magistrate upon the day ordered, he shall be discharged unless he be demanded by some person authorized by the warrant of the executive to receive him, or unless the court or magistrate shall see cause to commit him, or to require him to recognize anew for his appearance at some other day, and if, when ordered, he shall not so recognize, he shall be committed and detained, as before provided; whether the person so charged shall be recognized, committed, or discharged, any person authorized by the warrant of the executive may, at all times, take him into custody, and the same shall be a discharge of the recognizance, if any, and shall not be deemed an escape.

SECT. 4851. The complainant in such case shall be answerable for all the actual costs and charges, and for the support in prison of any person so committed, and shall advance to the jailer one week's board at the time of commitment, and so from week to week as long as such person shall remain in jail; and if he fail to do so, the jailer may forthwith discharge such person from his custody.

SECT. 4852. It shall be lawful for all officers in the State of Michigan, or other persons duly authorized, on lawful warrants from any judicial officer of that State, to convey any person who has been convicted of, or may be charged with any crime committed within the State of Michigan, through the State of Wisconsin, from the upper peninsula to the lower peninsula, or from the lower peninsula to the upper peninsula of Michigan, for the purpose of final execution or trial.

SECT. 4853. If any person so convicted of or charged with crime in the State of Michigan, on being so conveyed by such officers, or other person duly authorized under the laws of Michigan to have the custody of such person, shall sue out a writ of *habeas corpus*, it shall be a sufficient answer to said writ by the person having such custody, that he holds such person, by virtue of a lawful warrant from any judicial officer of the State of Michigan, and he shall annex to such answer a copy of the writ, by which he claims the custody of such person.

SECT. 4854. Any or all persons who shall in any manner aid such person so being conveyed through the State of Wisconsin, by virtue of any such writ or warrant, to escape, or shall resist any officer or person while engaged in carrying any such prisoner through this State, shall be liable to the same penalties as now

provided by the laws of this State against persons aiding prisoners to escape or resisting officers of this State.

[Revised Statutes of Wisconsin, 1878, chap. cxcviii. pp. 1123-1125.]

## REQUISITIONS.

### STATE OF WISCONSIN.

#### EXECUTIVE DEPARTMENT.

MADISON, , 189 .

SIR, — I am directed by the Governor to ask your attention to the requirements embraced in the following rules and regulations, which have been adopted by this department, in conformity with the rules formulated by the Interstate Extradition Convention for the purpose of securing uniformity of practice in applications for requisitions on the executive authority of other States and Territories for the surrender of fugitives from justice.<sup>1</sup>

Very respectfully,

Your obedient servant,

\_\_\_\_\_,  
*Private Secretary to the Governor.*

#### RULES OF PRACTICE.

THE application for the requisition must be made by the district or prosecuting attorney for the county or district in which the offence was committed; *provided*, that if in any case such district attorney or other officer shall refuse to make the application, it may be made by any other person, but must then be accompanied by the affidavit of at least two credible persons, stating, so far as can be ascertained, the reason of such refusal, and all the circumstances connected therewith.

The following must appear by the certificate of the district or prosecuting attorney: —

(a) The full name of the person for whom extradition is asked, together with the name of the agent proposed, to be properly spelled in Roman capital letters, for example: JOHN DOE.

<sup>1</sup> The rules here given contain additions to the rules adopted by the conference. For the latter, see the introduction to this Appendix.

(b) That in his opinion the ends of public justice require that the alleged criminal be brought to this State for trial at the public expense.

(c) That he believes he has sufficient evidence to secure the conviction of the fugitive.

(d) That the person named as agent is a proper person, and that he has no private interest in the arrest of the fugitive.

(e) If there has been any former application for a requisition for the same person, growing out of the same transaction, it must be so stated, with an explanation of the reasons for a second request, together with the date of such application as near as may be.

(f) If the fugitive is known to be under either civil or criminal arrest in the State or Territory to which he is alleged to have fled, the fact of such arrest and the nature of the proceedings on which it is based must be stated.

(g) That the application is not made for the purpose of enforcing the collection of a debt, or for any private purpose whatever, and that if the requisition applied for be granted the criminal proceedings shall not be used for any of said objects.

(h) The nature of the crime charged, with a reference, when practicable, to the particular statute defining and punishing the same.

(i) If the offence charged is not of recent occurrence, a satisfactory reason must be given for the delay in making the application.

1. In all cases of fraud, false pretences, embezzlement, or forgery, when made a crime by the common law or any penal statute, the affidavit of the principal complaining witness or informant that the application is made in good faith, for the sole purpose of punishing the accused, and that he does not desire or expect to use the prosecution for the purpose of collecting a debt, or for any private purpose, and will not directly or indirectly use the same for any of said purposes, shall be required, or a sufficient reason be given for the absence of such affidavit.

2. Proof by affidavit of *facts and circumstances* satisfying the executive that the alleged criminal has fled from the justice of the State, and is in the State on whose executive the demand is requested to be made, must be given. The fact that the alleged criminal was in the State where the alleged crime was committed at the time of the commission thereof, and is found in the State upon which the requisition was made, shall be sufficient evidence, in the absence of other proof, that he is a fugitive from justice.



3. If an indictment has been found, certified copies in duplicate must accompany the application.

4. If an indictment has not been found by a grand jury, the *facts and circumstances* showing the commission of the crime charged, and that the accused perpetrated the same, must be shown by affidavits taken before a *magistrate* (a notary public is not a magistrate within the meaning of the statutes), and that a warrant has been issued, and duplicate certified copies of the same, together with the returns thereto, if any, must be furnished upon an application.

5. The magistrate before whom the affidavits are taken must certify whether, in his opinion, the parties making the same are to be believed.

6. The official character of the officer taking the affidavits or depositions, and of the officer who issued the warrant, must be duly certified.

7. If the crime charged be forgery, the affidavit of the person whose name is alleged to be forged must be produced or a sufficient reason given for its absence.

8. All papers should be *duplicate originals*, except the complaint and warrant, which should be certified copies. Duplicate originals or certified copies of all papers necessary upon the application must be furnished to the Governor, that one set may be retained in this Department and the other attached to the requisition. This requirement is designed to embrace *all* the papers in the case, including the formal application. In case the application is for a requisition upon the Governor of Ohio, *triplicate* originals or certified copies of all the papers must be furnished. When certified copies of papers are given, they must be authenticated as prescribed in section 4140 of the Revised Statutes.

9. Upon the renewal of an application, for example, on the ground that the fugitive has fled to another State, not having been found in the State on which the first was granted, new or certified copies of papers, in conformity with the above rules, must be furnished.

10. In the case of any person who has been convicted of any crime, and escapes after conviction or while serving his sentence, the application may be made by the jailer, sheriff, or other officer having him in custody, and shall be accompanied by certified copies of record of conviction and sentence upon which the person

is held, with the affidavit of such person having him in custody, showing such escape, with the circumstances attending the same.

11. No requisition will be granted for a fugitive who has taken refuge in the British Provinces.

12. As bastardy is not sufficiently well defined by the laws of this State as a crime within the meaning of Chapter 7 of the Act of Congress of February 12, 1793, no requisition will be granted for the surrender of a fugitive charged with this offence.

13. No requisition will be granted in a case in which the offence is of such trivial character as to leave a doubt of the granting a mandate thereon by the executive authority in other States and Territories.

14. If a requisition shall have been improperly or unadvisedly granted, there will be no hesitation in revoking it.

15. Any application not complying with the requirements of law and these rules will be rejected, without inquiring into its intrinsic merit, unless non-compliance is satisfactorily explained.

16. In all cases of rejected applications for requisitions, the papers will be retained in this Department.

## FORMS.

[No. 1.—*Requisition.*]

### STATE OF WISCONSIN.

\_\_\_\_\_, Governor, to his Excellency the Governor of the  
State of \_\_\_\_\_.

WHEREAS, it appears by the annexed papers, which I certify to be authentic, that \_\_\_\_\_ stand charged by affidavit with the crime of \_\_\_\_\_, committed in the County of \_\_\_\_\_ in this State, and that \_\_\_\_\_ ha fled from the justice of this State and taken refuge in the State of \_\_\_\_\_ ;

Now, therefore, pursuant to the provisions of the Constitution and laws of the United States in such case made and provided, I do hereby require that the said \_\_\_\_\_ be apprehended and delivered to \_\_\_\_\_, who is duly authorized to receive and convey \_\_\_\_\_ to the State of Wisconsin, here to be dealt with according to law.

## APPENDIX II.

In testimony whereof, I have hereunto set my  
the Great Seal of the State of Wisconsin to be  
the city of Madison, this                      day of  
our Lord one thousand eight hundred and eighty.

**By the Governor,**

**Secretary of State.**

[No. 2. — *Agent's Warrant.*]

## STATE OF WISCONSIN.

\_\_\_\_\_, Governor, to  
County of \_\_\_\_\_, greeting.

WHEREAS \_\_\_\_\_ stands charged by a  
crime of \_\_\_\_\_, committed in the County of  
State, and has by a requisition of this date by me  
of the Governor of \_\_\_\_\_, as a fugitive fi

Now, therefore, I do hereby appoint and authorize \_\_\_\_\_ as my agent on the part of the State of Wisconsin to \_\_\_\_\_ from the executive authority of the State \_\_\_\_\_ and convey \_\_\_\_\_ to the said County of \_\_\_\_\_ at the expense and cost of the said county, there to be dealt with according to law.

**You are directed to return this warrant to this  
dorsed with a certificate of your proceedings hereun**

In testimony whereof, I have hereunto set my ha  
the Great Seal of the State of Wisconsin to be at  
the city of Madison, this                      day of  
our Lord one thousand eight hundred and eighty-

By the Governor,

**Secretary of State.**



[No. 4. — *Authority to Foreign Agent.*]

## STATE OF WISCONSIN.

\_\_\_\_\_, Governor, to all to whom these presents shall  
come, greeting.

To \_\_\_\_\_, Agent of the State of \_\_\_\_\_.

WHEREAS, a demand has been made upon the Governor of the State of Wisconsin by the executive authority of the State of \_\_\_\_\_, for the delivery over of \_\_\_\_\_, now alleged to be within the jurisdiction of this State as fugitive from justice of said State, as defined by the Constitution and laws of the United States;

And whereas, such demand is accompanied by the copy of an \_\_\_\_\_, charging such alleged fugitive with having committed the crime of \_\_\_\_\_, in the County of \_\_\_\_\_, in said State of \_\_\_\_\_, certified as authentic by the Governor of said State;

Now, therefore, I, \_\_\_\_\_, Governor of the State of Wisconsin, do by this, my warrant, authorize and empower you, if such fugitive \_\_\_\_\_ not held in custody or under recognizance to answer for any offence against the laws of this State or of the United States, or by force of any civil process, and if \_\_\_\_\_ shall be delivered to you by any officer of this State pursuant to my warrant for \_\_\_\_\_ arrest this day issued, to take and transport the said \_\_\_\_\_ to the line of this State, at your own expense; and I do hereby require all civil officers within this State to afford all needful assistance in the execution hereof, at your expense. This warrant will become void in thirty days.

In testimony whereof, I have hereunto set my hand, and caused the Great Seal of the State of Wisconsin to be affixed. Done at the city of Madison, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and eighty-\_\_\_\_\_.

By the Governor,

\_\_\_\_\_,  
Secretary of State.

## WYOMING.

**SECTION 3361.** Where an affidavit shall be filed before any judge of a district court, police court, or any justice of the peace within this Territory, setting forth that any person charged with the commission of any criminal offence against the laws of any other State or of the Territories of the United States, and which, if the act had been committed in this Territory, would, by the laws thereof, have been a crime, is, at the time of filing such affidavit, within the county where the same may be filed, it shall be lawful, and it is hereby made the duty of such judge or justice of the peace to issue his warrant, directed to the sheriff or any constable of the county, commanding him forthwith to arrest and bring before the officer issuing such writ, the person so charged. [C. L. 1876, chap. xiv. § 199.]

**SECT. 3362.** When the person arrested, as provided in the preceding section, shall be brought before the officer issuing such warrant, it shall be lawful, and it is hereby made the duty of such officer to hear and examine such charge, and upon proof by him adjudged to be sufficient, to commit such person to the jail of the county in which such examination shall take place, or cause such person to be delivered to some suitable person to be removed to the proper place of prosecution. [C. L. 1876, chap. xiv. § 200.]

**SECT. 3363.** Whenever any person is committed to jail by any judge or justice of the peace, by either of the provisions of the preceding section, it shall be the duty of such judge or justice of the peace, forthwith to give notice, by letter or otherwise, to the sheriff of the county in which such offence shall have been committed, or to the person injured by such offence, and no person so committed shall be delayed longer in jail than necessary to allow a reasonable time to the person so notified, after they shall have received such notice, to apply for and obtain the proper requisition for the persons so committed. [C. L. 1876, chap. xiv. § 201.]

[Revised Statutes of Wyoming, 1887, title xxxix. chap. xvi. pp. 718, 719.]

No rules of practice have been adopted in Wyoming.

## FORMS.

[No. 1. — *Requisition.*]

## TERRITORY OF WYOMING.

## EXECUTIVE DEPARTMENT.

\_\_\_\_\_, *Governor of Wyoming, to his Excellency, the Governor of*

WHEREAS, it appears by the annexed \_\_\_\_\_, which I certify to be authentic and duly authenticated in accordance with the laws of this Territory, that \_\_\_\_\_ stand charged with the crime of \_\_\_\_\_, committed in the County of \_\_\_\_\_, in this Territory, and it has been represented and satisfactorily shown to me that he has fled from the justice of this Territory and has taken refuge in the \_\_\_\_\_ of \_\_\_\_\_;

Now, therefore, pursuant to the provisions of the Constitution and laws of the United States, in such cases made and provided, I do hereby request that the said \_\_\_\_\_ be apprehended and delivered to \_\_\_\_\_, who is hereby authorized to receive and convey \_\_\_\_\_ to the Territory of Wyoming, here to be dealt with according to law. The Territory not to be liable for any expense incurred in the pursuit and arrest of said fugitive.

In testimony whereof, I have hereunto set my hand and caused to be affixed the Great Seal of the Territory.

Done at the city of Cheyenne, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and \_\_\_\_\_, and of the Independence of the United States, the one hundred and \_\_\_\_\_.

\_\_\_\_\_,  
*Governor of Wyoming.*

By the Governor,

\_\_\_\_\_,  
*Secretary of Territory.*





[No. 3. — *Rendition Warrant.*]

## TERRITORY OF WYOMING.

## EXECUTIVE DEPARTMENT.

\_\_\_\_\_, *Governor.*

WHEREAS, it appearing from the requisition of his Excellency the Governor of the \_\_\_\_\_ of \_\_\_\_\_, bearing date \_\_\_\_\_, and from \_\_\_\_\_ thereto attached duly authenticated, that \_\_\_\_\_ stand charged with the crime of \_\_\_\_\_, committed in the County of \_\_\_\_\_, in the year \_\_\_\_\_, in said \_\_\_\_\_, and that said \_\_\_\_\_ fugitive from justice and ha taken refuge in this Territory ;

And whereas, the said requisition requests that the said \_\_\_\_\_ be apprehended and delivered to \_\_\_\_\_, who is the duly appointed agent, and authorized to receive and convey h \_\_\_\_\_, the said \_\_\_\_\_, to the \_\_\_\_\_, to be dealt with according to law ;

Now, therefore, I, \_\_\_\_\_, Governor, do command the sheriff of \_\_\_\_\_ County, or any of his deputies, to arrest the said \_\_\_\_\_, and \_\_\_\_\_ safely keep and deliver to said \_\_\_\_\_, agent as aforesaid ;

Provided, however, that said \_\_\_\_\_ shall be afforded a reasonable opportunity to assert, before delivery as aforesaid, any legal rights he may have in the premises.

You, the said sheriff, will, without unnecessary delay, make return of this writ to the office of the Secretary of the Territory, with statement of your doings hereunder indorsed hereon.

In testimony whereof, I have hereunto set my hand and caused the Great Seal of the Territory to be hereto affixed.

Done at Cheyenne, the Capital, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and eighty-\_\_\_\_\_, and of the Independence of the United States the one hundred and \_\_\_\_\_.

\_\_\_\_\_  
*Governor of Wyoming.*

By the Governor,

\_\_\_\_\_,  
*Secretary of the Territory.*

**NOTICE TO THE SHERIFF OR OTHER OFFICER MAKING THE ARREST.**  
— Your attention is called to the following paragraph relating to fugitives demanded on requisition, copied from the Revised Statutes of the United States, Section 5278, to wit: “All costs or expenses incurred in the apprehending, securing, and transmitting such fugitive to the State or Territory making such demand, shall be paid by such State or Territory.”

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